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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No.

FOOD AND ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

1. Whether passage of the Workers' Compensation Act of 1979 by the District of Columbia Council contravened the general provisions of the Self-Government and Governmental Relations Act passed by Congress pursuant to Article I, § 8, clause 17 of the Constitution.

2. Whether passage of the Workers' Compensation Act of 1979 was accomplished without Congressional authority and absent express language in the Self-Government Act.

3. Whether passage of the Workers' Compensation Act of 1979 violated the specific prohibitions regarding the enactment of any act or repeal of any act which would result in an interference with a federal function, as set forth in § 1-233(a)(3) of the Self-Government Act.

4. Whether passage of the Workers' Compensation Act of 1979 impermissibly limited the jurisdiction of the federal courts, in violation of § 1-233(a)(8) of the Self-Government Act, while at the same time expanding the jurisdiction of the District's local court system, which is expressly prohibited by § 1-233(a)(4).

PARTIES BELOW

In the Court below, the Petitioner was an Intervenor. The Respondent District of Columbia was the Appellant. In that case, The Greater Washington Central Labor Council of Metropolitan Washington was an Appellee. In a separate action consolidated with the above cases, The Greater Washington Board of Trade was the Appellant, while the District of Columbia was the Appellee.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES BELOW	ii
TABLE OF CITATIONS	v
OPINIONS AND JUDGMENT BELOW	1
JURISDICTION	1
STATUTES INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
I. The District Of Columbia Court Of Appeals Erred In Determining That Congress, In Passing The District Of Columbia Self-Government Act, Intended To Allow The Council To Enact Legislation Concerning Workers' Compensation For The Private Sector	4
II. The District Of Columbia Court Of Appeals Erred In Concluding That The Self-Government Act Authorized The Passage Of Legislation Transferring The Private Sector Workers' Compensation Program From The Federal Government To The District Government Absent Specific Language Permitting Such A Transfer	9
III. The District Of Columbia Court Of Appeals Erred In Ruling That The Passage Of The Workers' Compensation Act Of 1979 Did Not Violate § 1-233(a)(3) Of The Self-Government Act	15
IV. The District Of Columbia Court Of Appeals Erred In Ruling That The Workers' Compensation Act Of 1979 Did Not Violate The Prohibitions Contained In §§ 1-233 (4) And (8) Of The Self-Government Act	25
CONCLUSION	28
APPENDIX A — Court of Appeals Decision Denying Petition for Rehearing *En Banc*	1a
APPENDIX B — Court of Appeals Decision	3a
APPENDIX C — Trial Court Decision	22a
APPENDIX D — Memorandum of James E. Lemert	35a

Table of Contents Continued

Page

APPENDIX E — Memorandum of Carin Ann Clauss ... 40a
APPENDIX F — Memorandum of Judith Rogers 43a
APPENDIX G — Statutes Involved 51a

TABLE OF CITATIONS

CASES:	Page
Amalgamated Association of Street, etc. Employees v. *Adler*, 119 U.S. App. D.C. 274, 340 F.2d 799 (1964)	21
Associated Indemnity v. *Shea*, 455 F.2d 913 (5th Cir. 1972)	23
Baker v. *Carr*, 369 U.S. 186 (1962)	8
Bishop v. *District of Columbia*, 411 A.2d 997 (D.C. App. 1980)	9
California Pub. Util. Comm'n. v. *United States*, 355 U.S. 534 (1956)	24
Capitol Hill Restoration Society, Inc. v. *Moore*, 410 A.2d 184 (D.C. App. 1979)	9
Cardillo v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947)	20, 23
Citizens Association of Georgetown v. *Zoning Commissioner of the District of Columbia*, 392 A.2d 1027 (D.C. App. 1978)	7
Crowell v. *Benson*, 285 U.S. 22 (1934)	17, 22, 23
Dillingham v. *Massey*, 505 F.2d 1126 (9th Cir. 1974)	22
Director, Office of Workers' Compensation Programs v. *Boughman*, 178 U.S. App. D.C. 132, 545 F.2d 210 (1976)	21
Director, Office of Workers' Compensation Programs v. *National Van Lines*, 198 U.S. App. D.C. 239, 613 F.2d 972 (1979)	17, 20, 22, 26
District of Columbia v. *Thompson*, 346 U.S. 100 (1953)	5
District of Columbia v. *Washington Home Ownership Council, Inc.*, 415 A.2d 1349 (D.C. App. 1980)	7, 8, 9
Don't Tear It Down v. *Pennsylvania Ave. Dev. Corp.*, 206 U.S. App. D.C. 122, 642 F.2d 527 (1980)	24
Gudmundson v. *Cardillo*, 75 U.S. App. D.C. 230, 126 F.2d 521 (1942)	3, 16, 22, 24
Hancock v. *Train*, 426 U.S. 167 (1976)	24
Harrington v. *Moss*, 407 A.2d 658 (D.C. App. 1979)	18

Table of Citations Continued

Page

Hastings v. *Earth Sattelite Corporation*, 202 U.S. App. D.C. 85, 628 F.2d 85 (1980), *cert. denied*, 449 U.S. 905 (1980) 21

Haughton Elevator Co. v. *Lewis*, 572 F.2d 447 (4th Cir. 1978) 22

Hepburn v. *Elzey*, 2 Cranch 445 (1805) 6

In Re District of Columbia Workmen's Compensation Act, 180 U.S. App. D.C. 216, 554 F.2d 1075 (1976), *cert. denied*, 429 U.S. 820 (1976) 17, 23, 26

In Re Neagle, 135 U.S. 1 (1890) 24

Johnson v. *Maryland*, 254 U.S. 51 (1920) 24

Mayo v. *United States*, 319 U.S. 441 (1943) 24

Metropolitan Casualty Insurance Co. v. *Hoage*, 72 F.2d 175 (D.C. Cir. 1934) 23

Milhouse v. *Levi*, 179 U.S. App. D.C. 1, 548 F.2d 357 (1976) 14

Palmore v. *United States*, 411 U.S. 389 (1973) 6

Philbrook v. *Glodgett*, 421 U.S. 707 (1975) 7

Potomac Electric Power Co. v. *Director, Office of Workers' Compensation Programs*, 449 U.S. 268 (1980) . 19, 21

Rockport Yacht Supply Co., Inc. v. *Hollis*, 371 F. Supp. 1229 (S.D. Tex. 1973) 23

Southern Pacific Co. v. *Jensen*, 244 U.S. 205 (1917) .. 17

Sperry v. *Florida*, 373 U.S. 379 (1963) 24

Thomas v. *Washington Gas Light Co.*, 448 U.S. 261 (1980) 19, 20

Travelers Insurance Co. v. *Cardillo*, 78 U.S. App. D.C. 392, 141 F.2d 362 (1944) 23

United States v. *Nixon*, 418 U.S. 683 (1974) 8

U.S. Industries/Federal Sheet Metal, Inc. v. *Director, Office of Workers' Compensation Programs*, U.S. (Decided March 23, 1982) 19

Table of Citations Continued

Page

STATUTES:

United States Constitution

U.S. CONST., art. I, § 8, cl. 17 ..... 3, 4, 11

U.S. CONST., art. VI, cl. 2 ..... 24, 25

United States Code

5 U.S.C. § 8101 ..... 10, 11

5 U.S.C. § 8139 10

28 U.S.C. § 1257(3) 1

33 U.S.C. § 908(c)(1-20) 21

33 U.S.C. § 918(a) 18

33 U.S.C. § 919(d) 23

33 U.S.C. § 921(b) 18

33 U.S.C. § 921(c) 26

33 U.S.C. § 939(a) 18

33 U.S.C. § 939(h) 18

Acts of Congress

District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473 (D.C. Code 1981, §§ 11-101 *et seq.*) 3, 25

District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774, (D.C. Code 1981, §§ 1-201 *et seq.*) ..... *passim*

§ 204(e) 10

An Act to Provide for Voluntary Apprenticeship in the District of Columbia, 60 Stat. 204, May 20, 1946 (36 D.C. Code § 121 *et seq.*) (Supp. V, 1978) 11

Organic Act of June 11, 1878, 20 Stat. 102 5

Defense Base Act, Act of August 16, 1941, ch. 357, 55 Stat. 622 (42 U.S.C. §§ 1651 *et seq.*) 17

Non-Appropriated Fund Instrumentalities Act, Act of June 19, 1952, ch. 444, 66 Stat. 138 (5 U.S.C. §§ 8171 *et seq.*) 17

Table of Citations Continued

Page

Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600 (D.C. Code 1973, §§ 36-501 *et seq.*) 17

District of Columbia Code

§ 1-201 (1981) 3

§ 1-233(a) (1981) 3, 16

§ 1-233(a)(3) (1981) 16, 20, 24, 25

§ 1-233(a)(4) (1981) 3, 24, 27, 28

§ 1-233(a)(8) (1981) 3, 24, 27, 28

§ 1-233(b) (1981) 3, 16

§ 36-121 (1973) 11

§ 36-501 (Supp. V, 1978) ..... *passim*

§ 36-503 (Supp. V, 1978) 19

§ 36-322(b)(3) (1981) 26

§ 36-322(c) (1981) 26

Acts of Council

District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139 (1979) (D.C. Code 1981, §§ 1-601.1 *et seq.*) 7

District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77 (1980) (D.C. Code 1981, §§ 36-301 *et seq.*) ..... *passim*

MISCELLANEOUS:

73 *Am. Jur.*2d *Statutes* § 211 (1974) 14

Black's Law Dictionary, 906 (4th Revised Ed. 1968) .. 14

Longshoremen's and Harbor Workers' Act Procedure Manual (LHWCA-PM, United States Department of Labor, December, 1978) 18

H. Rept. No. 93-482, 93d Cong., 2nd Sess. (1974) 5

Legislative History of the District of Columbia Self-Government and Governmental Reorganization Act, 93d Cong., 2nd Sess., H. Doc. 93-320 (1974) 5

Petitioner, Food and Allied Services Trades Council of Metropolitan Washington prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals.

OPINIONS AND JUDGMENT BELOW

The Opinion and Order of the District of Columbia Court of Appeals denying the petition for rehearing *en banc*, not yet officially reported, dated April 28, 1982, is set forth in Appendix A. The opinion of the Court of Appeals is reported at 442 A.2d 110, and is set forth in Appendix B. The opinion and decision of Associate Judge John F. Doyle of the Superior Court of the District of Columbia was delivered orally on September 26, 1980 also is unreported and is set forth in Appendix C.

JURISDICTION

The judgment of the Court of Appeals was entered on January 28, 1982. The Order of the Court of Appeals denying the Petitions for Rehearing and/or Rehearing En Banc was entered on April 28, 1982. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

The statutes and constitutional provisions central to the instant petition are set forth in Appendix G. They are indexed as follows:

United States Constitution

Article I, § 8, clause 17

Article VI, clause 2

United States Code

33 U.S.C. § 918(a)

33 U.S.C. § 921(c)

33 U.S.C. § 921(d)

District Of Columbia Code

§ 1-201(a) (1981)

§ 1-204 (1981)

§ 1-233(a)(3) (1981)

§ 1-233(a)(4) (1981)

§ 1-233(a)(8) (1981)

§ 36-322(b)(3) (1981)

§ 36-322(c) (1981)

§ 36-501 (Supp. V, 1978)

STATEMENT OF THE CASE

On May 6, 1980, the District of Columbia Council passed the Workers' Compensation Act of 1979. The Act was designed to permit the District of Columbia to administer the workers' compensation program for private sector employment in place of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.* as made applicable to the District, D.C. Code 1978, § 36-501 *et seq.* The latter Act had provided for federal control over the workers' compensation program since its enactment in 1928. The effect of the new law was to repeal § 36-501 and its federal control over the program. After the required congressional review period, the Act of 1979 became law on July 1, 1980.

In addition to the establishment of a locally managed program, the Act also permits appeals from administrative decisions to be taken to the District of Columbia Court of Appeals, D.C. Code 1981, § 36-322(b)(3), while enforcement matters are handled by the Superior Court. § 36-322(c).

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, representing a number of private sector unions, filed suit against the District of Columbia for a declaratory judgment as to the validity of the Act as well as injunctive relief. After cross motions for summary judgment,

the trial court ruled that the Act was null and void in that it violated the prohibitions contained in the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code 1981, § 1-201 *et seq.* On a general level, the trial judge determined that Congress' failure to repeal the existing federal coverage and its further failure to expressly transfer the private sector program to the District, as was done for the public employees' program in a scrupulously detailed manner, precluded the District from legislating on the subject of private sector workers' compensation. More specifically, the court ruled that the Act of 1979 and the repeal of § 36-501 had interfered with the federal functions performed by the United States Department of Labor in direct contravention of §§ 1-233(a(3) and (b) of the Self-Government Act. The court further found that the assumption of jurisdiction over compensation claims by the local courts represented an impermissible alteration of the jurisdiction of both the federal and local courts under the terms of § 1-233(a)(4) and (a)(8) of the Self-Government Act.

On appeal to the District of Columbia Court of Appeals, the decision of the trial court was reversed. The appellate court found that nothing in the Self-Government Act prevented the Council from legislating on the issue of private sector workers' compensation, a subject considered "local" in nature under the Self-Government Act. The Court then went on to find that no federal functions were disturbed inasmuch as all functions performed by the Department of Labor were local functions restricted to the District. For support, the Court looked to the case of *Gudmundson* v. *Cardillo*, 75 F.2d U.S. App. D.C. 230, 126 F.2d 521 (1942), which referred to § 36-501 as a local law passed by Congress under its Article I oversight responsibility. Similarly, the Court ruled that the assumption of jurisdiction by the local courts was permissible as they already had the authority to enforce awards and review contested administrative cases under the District of Columbia Court Reform and Criminal Procedure Act, D.C. Code 1981, §§ 11-101 *et seq.* In sum, the Act of 1979 was found valid and operational.

Petitioner filed a request for review *en banc*, which was denied. In a brief statement, however, four of the judges indicated that they would have preferred that the whole court pass on the issue of the transfer of jurisdiction rather than a three member panel.

In light of the trial court's decision as well as the opinion expressed in the *en banc* denial, the present petition ensued.

REASONS FOR GRANTING THE WRIT

I

The District Of Columbia Court Of Appeals Erred In Determining That Congress, In Passing The District Of Columbia Self-Government Act, Intended To Allow The Council To Enact Legislation Concerning Workers' Compensation For The Private Sector

In its decision, the District of Columbia Court of Appeals briefly reviewed the Self-Government Act, D.C. Code 1981, § 1-201 *et seq.* and concluded that nothing in its language precluded the Council of the District of Columbia from enacting the Workers' Compensation Act of 1979 on behalf of workers in the private sector. The Court's analysis of the Self-Government Act, however, was flawed at best, failing as it did to address a number of arguments advanced by petitioner herein. Petitioner respectfully asserts that a careful examination of the Self-Government Act in the context in which it arose will mandate a decision that the Council's action was unsanctioned and contrary to the desire of Congress.

At the outset, no quarrel exists as to Congress' right to legislate on behalf of the District of Columbia pursuant to Article I, Section 8, Clause 17 of the United States Constitution. U.S. CONST., Art. I, § 8, Cl. 17. That document provides Congress with

> . . . the power . . . to exercise exclusive legislation in all cases whatsoever over such District . . .

Congress, in decades past, has exercised this authority by passage of a number of Organic Acts designed generally to

grant a modicum of self-government to the inhabitants of the District. While it has always been a possibility that Congress could delegate full legislative power to the District, [1] such a transfer is subject to Congress' concomitant power "at any time to reverse, alter or revoke the authority granted." *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 109 (1953). It was within this context that the drive for home rule culminated in the drafting of what ultimately became the Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774.

As the Court of Appeals noted in its opinion, the Self-Government Act was passed to "relieve Congress of the burden of legislating upon essentially local District matters." 442 A.2d at 113, citing D.C. Code 1981, § 1-201. The Court, however, failed to place this section in the conjunctive context of the ultimate oversight function of Congress. Despite the relatively broad language quoted above, the legislative history, set forth in several volumes, is replete with Congressional concern regarding the possibility of an over-extensive grant of powers to the District which would violate the restrictions set forth in Article I. Indeed, House District Committee Chairman Brock Adams' concern with the matter of Congressional authority was such that he solicited a memorandum of law on the issue from Professor Jason I. Newman of Georgetown University. Professor Newman agreed that home rule legislation was a valid exercise of Congressional power, but noted that Congress must and *did intend to retain ultimate* legislative authority over the District. [2] After reviewing the *Thompson* case, *supra*, Professor Newman stated as follows:

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[1] *See*, for example, the Organic Act of June 11, 1878, 20 Stat. 102, which mandated a three Commissioner form of government.

[2] H. Rept. No. 93-482, 93d. Cong. reprinted in "Legislative History of the District of Columbia Self-Government and Governmental Reorganization Act," H. Doc. 93-320, 1973 at 1055-1060 (Committee Print 1974) (Hereinafter referred to as "Home Rule History").

> Regarding the . . . issue of whether Congress can exercise authority over that which it has delegated to the District of Columbia, it is clear that Congress may enact legislation which involves authority that has also been placed in the hands of the local government.
>
> * * *
>
> . . . it is quite clear that Congress may take away any legislative or fiscal powers granted to the District of Columbia government at any time. [3]

Similarly, Senator Charles McC. Mathias, in discussing S.1435, the Senate version of the Self-Government Act, stated that Congress had an "historic constitutional responsibility" [4] to oversee the governance of the District despite the passage of the Act. Additionally, in its report made part of S.1435, the Senate stated that

> . . . [t]he Congress may take such action as, in its wisdom, it deems desirable with respect to any municipal action taken by the people or government of the municipality under the authority of the charter. Congress would continue to initiate local legislation should it so desire. Thus, Congress under the terms of this bill, *retains* full residual, ultimate and exclusive legislative jurisdiction over the District in conformity with the Constitutional mandate . . . [5]

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[3] Home Rule History, at 1069.

[4] *Id.* at 343.

[5] Home Rule History at 280. It is also worth noting that the Senate drafters used the terms "municipal" and "municipality," making it clear that Congress did not intend to equate the District with any of the states, home rule legislation notwithstanding. Certainly the Supreme Court has long recognized that the District is "constitutionally different from the states." *Palmore* v. *United States*, 411 U.S. 389 (1973), citing *Hepburn* v. *Elzey*, 2 Cranch 445 (1805). See also the letter of the Chief Judge Gerard D. Reilly of the District of Columbia Court of Appeals to Representative Ancher Nelson, dated August, 1973, in which he stated that, in his view, the Home Rule Act does not confer statehood on the District. Home Rule History at 1126.

This small sampling of the statements from the record manifests the extreme care which Congress took in drafting the Self-Government Act. Viewing this effort in light of the cardinal rule of statutory construction that courts must implement the will of Congress, *Philbrook* v. *Glodgett*, 421 U.S. 707 (1975); *District of Columbia* v. *Washington Home Ownership Council, Inc.*, 415 A.2d 1349 (D.C. App. 1980), as well as the corollary that the statutory language must be looked at "within the context of the whole legislative scheme when legislative intent is to be determined," *Citizens Association of Georgetown* v. *Zoning Commission of the District of Columbia*, 392 A.2d 1027, 1033 (D.C. App. 1978), it is clear that Congress' grant to the District was not, and could not, be as all inclusive as the District's Court of Appeals suggests. The Self-Government Act, to be sure, does grant a fair measure of legislative authority to the District; it does so, however, within the boundaries of Congress' desire and obligation to maintain control over matters which may be local in nature and certainly over those activities which involve "federal functions." Thus, it appears that Congress intended that the District involve itself in legislating in areas of purely local interest, as evidenced by the passage of the Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, D.C. Code 1981, §§ 1-601.1 *et seq.* and a number of revenue raising measures. To summarize, then, Petitioner suggests that the brief review of the Self-Government Act by the Court below fails to support the Court's ultimate conclusion that the Self-Government Act confers broad enough authority for the District to legislate in areas which are not local in nature and which may infringe on federal activities in the city.

The Court of Appeals' review of the Self-Government Act is notably brief. By simply reciting the standard phrases justifying the existence of the Self-Government Act, [6] the Court attempted to confer validity on the action taken by the Council.

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[6] See the opinion printed in Appendix B at PP. 3a-21a.

This obvious effort to defer to the Council's interpretation of its own authority is inconsistent with the Court of Appeals' earlier view of this issue expressed in *District of Columbia* v. *Washington Home Ownership Council, Inc., supra.* There, the Court was faced with a review of emergency legislation passed by the Council. Before doing so, the Court cautioned that the Council is the result rather than the initiator of the Self-Government Act. Thus, the Council's interpretation of its own authority must yield to Congressional intent.[7] The concurring opinion of Judge Gallagher went a step further in stating that it is inappropriate to construe the Congressional enactment, the Self-Government Act, to save the local legislature's action:

> . . . Deference to the legislative body is not appropriate, however, when the issue is interpretation of the "constitution" [i.e., the Self-Government Act].[8]

The essence of this approach is to commit to the courts the decision as to whether the enabling document grants authority to another branch of government or whether that branch exceeded its prescribed authority. *See, United States* v. *Nixon*, 418 U.S. 683 (1974) and *Baker* v. *Carr*, 369 U.S. 186 (1962).

In the instant action, however, the panel simply catalogues the specific prohibitions contained in the Self-Government Act after the brief recitation of Congress' general reasons for passage of the Act. The Court's limited analysis does not explain the Council's action in the area of private sector workers' compensation. The importance of the subject to the District, as evidenced by the two year effort required for passage, demanded a careful and precise inquiry into the reasons for and limitations of the Self-Government Act as well as a review of the Council's action. Instead, the Court allowed the Council's enactment to attain a quality of presumptive validity before its analysis began. The result was a foregone conclusion, despite

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[7] 415 A.2d at 1351, n. 5.

[8] *Id.* at 1367.

the specific prohibitions set forth by Congress. This result was erroneous and thereby taints the conclusions reached in the remainder of the opinion.

Petitioner respectfully avers that had the Court reviewed the Self-Government Act as comprehensively as it did in the *Home Ownership Council* case, and in other cases since 1973, [9] it would have reached the inescapable conclusion that the authority granted by Congress to the District failed to encompass passage of the Workers' Compensation Act of 1979. The reluctance of the Court to rule accordingly must be construed as error.

II

The District Of Columbia Court Of Appeals Erred In Concluding That The Self-Government Act Authorized The Passage Of Legislation Transferring The Private Sector Workers' Compensation Program From The Federal Government To The District Government Absent Specific Language Permitting Such A Transfer

Throughout the course of this action, Petitioner has urged examination of the Self-Government Act to determine whether Congress intended that the District acquire the private sector workers' compensation program. The thrust of this Petitioner's argument has been that the Self-Government Act specifically authorizes the transfer to the District of a number of governmental functions, including several affecting workers. The Act is peculiarly silent on the matter of private sector workers' compensation despite its coverage of several hundred thousand employees and the involvement of millions of dollars.

The trial court viewed this omission in a succinct fashion in its opinion delivered from the bench:

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[9] *See, Bishop* v. *District of Columbia*, 411 A.2d 997 (D.C. App. 1980) and *Capitol Hill Restoration Society, Inc.* v. *Moore*, 410 A.2d 184 (D.C. App. 1979).

> Now, these provisions that [Congress] made for the transfer of these . . . functions of the Secretary of Labor would . . . in a *prima facie* fashion evince a legislative pattern and purpose to transfer to the District of Columbia existing and operating Federal—and operating functions conducted under Federal statutes by Federal officials, only through the means of specific and express statutory provision taking care to preserve carefully the transfer of records and accounts . . .
>
> To suggest that the Congress intended to treat the workers' compensation program covering the private sector in a different fashion would by atypical and against the grain of the legislative pattern manifest in the Act . . . [10]

The Court of Appeals, however, rejected this logical interpretation in favor of the analysis referred to in Argument I. Once again, the Court deferred to the local legislature by attempting to construe the Workers' Compensation Act to rescue the Council's effort from the prohibitions of the Self-Government Act. The Court simply stated, without basis, that nothing in the Self-Government Act prevented legislation on the subject of private sector workers' compensation. The panel also concluded that Congress chose not to transfer the program at that time, apparently leaving it to the District to determine a course of action. That Congress had transferred other programs received little attention from the Court.

In its opinion, the Court of Appeals glossed over the fact that "certain public employment services" [11] were transferred expressly by the Self-Government Act from the Department of Labor to the District government. While it did note the transfer of the public employees' compensation program, [12] the Court attributed that action to the language contained in 5 U.S.C. §§ 8101 and 8139. The rationale was that the public

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[10] Appendix C at 30a.

[11] Appendix B at 10a.

[12] *See* § 204(e) of the Self-Government Act.

program had not been entrusted to the Department of Labor by a statute that was "not applicable exclusively to the District of Columbia." [13] Regardless of the accuracy of this interpretation, it ignores that Congress also made an express transfer of another program which indisputably is effective only within the confines of the District. Section 204(d) of the Self-Government Act expressly transfers the functions of "An Act to provide for voluntary apprenticeship in the District of Columbia." 60 Stat. 204, approved May 20, 1946, from the Secretary of Labor to the District government. That particular Act is not part of the United States Code and was codified solely in D.C. Code § 36-121 *et seq.* (Supp. V, 1978). Thus, assuming the thrust of the Court's assertion with reference to 5 U.S.C. § 8101 *et seq.*, in this instance there is no support remaining for the Court's ruling that Congress did not have to transfer the private sector workers' compensation program in an express fashion, because D.C. Code § 36-501 *et seq.* was a "purely local" rather than federal statute. If Congress felt compelled, as it obviously did, to amend § 36-121 *et seq.* in specific ways to effect a transfer, it is equally clear that identical action was necessary before the District would be allowed to legislate and/or repeal § 36-501 *et seq.* Petitioner therefore submits that the omission of any reference to the express transfer of the apprenticeship program was a further attempt by the Court to validate the Workers' Compensation Act of 1979 despite the Self-Government Act's general and specific prohibitions.

Similarly, the Court saw Congress' failure to address private sector workers' compensation as mere oversight, but this is equally ill-considered. It is respectfully submitted that Congress' restraint was deliberate as that body's intent to preserve its authority over the administration of that program under Article I, Section 8, Clause 17 of the Constitution. The Council encroached upon Congress' constitutional oversight obligation and exceeded the provisions of the Congressionally enacted Self-Government Act.

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[13] Appendix B at 10a.

The tenuous nature of the Court of Appeals' analysis is further borne out by its failure to address the points raised in a number of documents made part of the trial court record. Examination of the memoranda prepared by the Corporation Counsel's office for the Council prior to the passage of the Workers' Compensation Act reveals that the District first espoused and then curiously abandoned the reasoning that later supported the trial court's decision.

In the earliest memorandum, dated February 8, 1980, [14] James E. Lemert, of the Legal Counsel Division, after reviewing the legislative history stated:

> . . . that Congress, at the time of the Self-Government Act, did not intend to transfer the functions of the Secretary of Labor in administering the provisions of the Longshoremen's Act [15] insofar as they pertain to the District of Columbia . . . [16]

Ultimately, Mr. Lemert reached his conclusion:

> In view of the foregoing, it is my opinion that, in the absence of a Congressionally or other federally approved transfer, the council should not repeal the provisions of D.C. Code §§ 36-501 *et seq.*, and provide for the bill to become law pursuant to § 602 of the Self-Government Act. . . . [17]

The conclusion reached therein essentially coincided with that of the Solicitor of the United States Department of Labor, Carin Ann Clauss, who stated in her memorandum of February 22, 1980 [18] that:

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[14] Appendix D at 35a-39a.

[15] This reference to the Longshoremen's Act is noteworthy in light of the "local v. federal" function argument *infra*.

[16] Appendix D at 38a.

[17] *Id.*, at 39a.

[18] Appendix E at 40a-42a.

> . . . Although workers' compensation may be a suitable subject for local law, any proposal to enact such legislation for the District of Columbia could not become effective until Congress repeals the present workers' compensation act which was enacted by Congress in 1928. [19]

A subsequent memorandum of Corporation Counsel, Judith Rogers, dated April 21, 1980, [20] written immediately prior to passage of the law, is essentially a political document. Nevertheless, its final conclusion is that:

> Because of such uncertainty, it would be preferable to obtain Congressional enabling or authorizing legislation to foreclose future challenges to a council act . . . [21]

While none of these documents is dispositive of the issue of express transfer, they do indicate that the matter was considerably less than the foregone conclusion seen by the panel of the Court of Appeals. The Court obviously preferred to disregard the interpretations of the Self-Government Act offered by these governmental representatives who were intimately familiar with both the program and the home rule history. Of all the Department of Labor programs reviewed by Congress, the one most deserving of specific transfer was the private sector compensation program. No other program involved a like number of individuals or required the vast expenditure of funds required for the program to function.

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[19] *Id.* at 41a.

[20] Appendix F at 43a-50a.

[21] *Id.* at 49a. All of this material must be read in conjunction with a letter from Secretary of Labor Peter Brennan to Representative Ancher Nelson urging that the apprenticeship program and the District employees' compensation program not be transferred to the District government. By contrast, Secretary Brennan suggested the transfer of the Longshoremen's Act functions to the District. Congress, however, did precisely the opposite, lending further credence to the fact that Congress never intended to transfer the private program or to permit the District to repeal § 36-501 *et seq.*

Petitioner respectfully suggests that the preceding arguments can best be summarized under the concept of *inclusio unius exclusio alterius*. Essentially, this doctrine imports that a designation of one item, party or matter operates as an absolute exclusion of all others. [22] In the context of the Self-Government Act, this doctrine means that the specific transfers made therein of United States Department of Labor functions operate as an exclusion of any Labor Department functions involving private sector workers' compensation.

The courts in the District of Columbia have recognized this doctrine as it applies to the growth of home rule and have given it much credence. Specifically, in *Milhouse* v. *Levi*, 179 U.S. App. D.C. 1, 548 F.2d 357 (1976), the United States Court of Appeals spoke to the issue as it applied to the Self-Government Act and its effect on the Lorton Reformatory furlough program:

> Congress, in enacting both the Court Reform Act and the Home Rule Act, did not amend any of the provisions under which the Attorney General has regulated the furlough program at the Lorton Reformatory. *In light of the long-standing practice in this regard, any assumption that failure to amend was due to inadvertence as distinguished from design would be to ignore the meticulous care Congress exhibited in conforming other statutory provisions to its legislative scheme for the District of Columbia* [footnote omitted]. *In short, if Congress had intended to alter the nature of the Attorney General's control over the Lorton Reformatory furlough program, same could have been done by express provision.* [23] (Emphasis supplied)

The reasoning set forth above undoubtedly applies to the issue herein. Had Congress desired to arrange for local control over workers' compensation for 300,000 private sector employees, it would have done so when it specifically disposed of programs

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[22] See generally, *Black's Law Dictionary*, 906 (4th Revised Ed. 1968) and 73 Am. Jur.2d Statutes § 211 (1974).

[23] 548 F.2d at 363.

of far lesser scope, not simply leaving it to Council to act upon at some indeterminate "later time" [24] as the panel below stated. If Congress intended only to defer transfer of the private program to a future date, little effort would have been required to so delay. Inasmuch as Congress did not do so, one can only conclude, pursuant to the *inclusio* doctrine, that no transfer was intended or even contemplated.

In summary, then, the Court of Appeals arrived at its decision that no express transfer of the private sector program was required under the Self-Government Act by skirting the obvious intent of Congress, an intent recognized by the participants in the local legislative process. Instead, the Court substituted conclusionary statements designed to justify the Council's action. The net result is that the decision failed, perhaps by design, to discern that the Workers' Compensation Act of 1979 violated the general precepts of the Congressionally passed Self-Government Act. Petitioner therefore respectfully opines that the error of the Court of Appeals presents a substantial federal issue as to whether the local legislature can override the intent of Congress and the constitutional mandate. Petitioner asserts that review of this aspect of the decision below is warranted.

III

The District Of Columbia Court Of Appeals Erred In Ruling That The Passage Of The Workers' Compensation Act Of 1979 Did Not Violate § 1-233(a)(3) Of The Self-Government Act

In addition to the general prohibitions inherent in the Self-Government Act, Congress provided a significant number of explicit interdictions to ensure that the District government would not infringe upon Congress' ultimate authority over the Federal city. The limitations contained in D.C. Code 1981,

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[24] Appendix B at 10a.

§§ 1-233(a) and (b) were focused upon by the parties and the Court below. One of the primary prohibitions is enumerated in § 1-233(a)(3). That subsection states as follows:

> (a) The council shall have no authority to pass any act contrary to the provision of this Act except as specifically provided in this Act or to—
>
> * * *
>
> (3) [e]nact any act, or enact any act to amend or repeal any act of Congress, which concerns the functions or property of the United States or which is not restricted, in its application exclusively in or to the District.

The trial court reviewed the prohibitory language and ruled that the passage of the Worker's Compensation Act clearly violated § 1-233(a)(3) in that it interfered with a function of the United States, *i.e.*, the administration of the Longshoremen's Act extension to the District by the United States Department of Labor as well as the enforcement powers of the federal courts. The Court of Appeals, however, reversed this ruling by limiting the definition of "federal function" to activities involving the "integrity of the federal domain." [25] Additionally, the panel found the case of *Gudmundson* v. *Cardillo*, 75 U.S. App. D.C. 230, 126 F.2d 521 (1942) authoritative on the issue of whether private sector compensation was exclusively a local matter. Petitioner respectfully asserts that the panel's decision cannot withstand close scrutiny.

In its decision, the Court of Appeals "surmised" [26] that Congress simply wanted to prevent District officials from interfering with federal officials in the performance of their national duties. The Court determined that performance of an allegedly local function by federal officials did not convert that function to one "federal" in nature. Thus, the fact that the Longshore-

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[25] Appendix B at 12a.

[26] Appendix B at 11a.

men's Act, as extended to the District, was administered and enforced by the federal government, did not make such activity a "federal function." Once again, the panel engaged in conclusion making without benefit of any in depth review of the obvious and extensive federal characteristics inherent in the program provided for in D.C. Code § 36-501 *et seq.*

No doubt exists about the genesis of § 36-501. By virtue of the Act of May 17, 1928, Ch. 612, § 1-3, 45 Stat. 600 (1928), Congress extended the provisions of the Longshoremen's Act to the private employees of the District. The Act incorporated both the substantive and procedural provisions of the Longshoremen's Act. *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, 198 U.S. App. D.C. 239, 613 F.2d 972 (1979), *cert. denied*, 448 U.S. 907 (1980); *In re District of Columbia Workmen's Compensation Act*, 180 U.S. App. D.C. 216, 554 F.2d 1075 (1976), *cert. denied*, 429 U.S. 820 (1976). This extension was the first of several enactments by which various constituencies not otherwise covered by state compensation laws received the benefit of federal law. *See*, for example, the Non-Appropriated Fund Instrumentalities Act, Act of June 19, 1952, ch. 444, 66 Stat. 131 (5 U.S.C. §§ 8171 *et seq.*) and the Defense Base Act, Act of August 16, 1941, ch. 357, 55 Stat. 622 (42 U.S.C. §§ 1651 *et seq.*) As with the District Act, most of the extensions of the Longshoremen's Act have little or nothing to do with the so-called maritime concepts which led at the outset to the Longshoremen's Act. *Crowell* v. *Benson*, 285 U.S. 22 (1934); *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917). Congress simply chose to cover employees in various locations and job categories who could not receive benefits under state laws. As the Court below correctly noted,

> . . . the Longshoremen's Act provided a solution to [Congress'] inability to agree on a program to cover private employees in the District of Columbia . . . [27]

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[27] Appendix B at 5a.

The net result of Congress' action was to impose a federal law on the eligible District employees. The salient point is the undeniable federal quality of each and every aspect of the Congressionally enacted § 36-501 *et seq.* Despite the Court of Appeals' view that § 36-501 is nothing more than a local act handled by the federal government as a matter of convenience, the clear and convincing evidence indicates that nothing could be further from the truth.

The Longshoremen's Act provisions have been administered by the Secretary of Labor since its inception in 1927. Similarly, once that law was extended to the District a year later, District employees were treated identically to their waterfront counterparts. The Secretary established another compensation district, District 40, to handle claims as was done in areas such as Los Angeles, Houston, Chicago and New York, 33 U.S.C. § 939(h). At all times, the Act is administered by employees and officials of the United States Department of Labor, 33 U.S.C. § 939(a). None has any relationship to the District. These officials direct policy and procedure for all compensation districts, publishing this information in a series of a volumes known as the Longshoremen's and Harbor Workers' Procedure Manual (LHWCA-PM, United States Department of Labor, December, 1978).

No special provisions are present in these documents concerning the District of Columbia; the pronouncements apply to all covered employees regardless of whether the Longshoremen's Act or one of its many extensions is involved. Administrative adjudications are made by the Office of Administrative Law Judges and the Benefits Review Board, 33 U.S.C. § 921(b), both of which are branches of the United States Department of Labor. Ultimately, formal judicial action on all claims arising under the Longshoremen's Act and its extensions comes under the jurisdiction of the federal court system, 33 U.S.C. §§ 918(a), 921(c). At no time can local or state courts in the District or elsewhere adjudicate any Longshoremen's Act claim or any claim arising under the extension of the Act to the District. *See Harrington* v. *Moss*, 407 A.2d 658

(D.C. App. 1979). Thus, from the filing of an initial claim by an injured worker in the District to its final adjudication in the United States Court of Appeals for the District of Columbia, the entire process remains solely within the province of the federal establishment. Each activity performed by any Labor Department employee, a federal employee, can only be denominated a federal function.

The Court of Appeals relied heavily on the fact that, allegedly, "no federal funds are involved in the Department of Labor's administration of § 36-501 " [28] While § 36-503 does suggest that sums be appropriated to pay the expenses incurred by the Department of Labor, the truth is that the District's contribution has never formed a significant percentage of District 40's budget. In recent years, the District has contributed [29] an average of $800,000 annually to defray costs. This amount obviously has little impact on the total cost of over 40 employees, rent, supplies, computer expenses and the like, as well as the value of services performed by the Office of Administrative Law Judges, Benefits Review Board and the Solicitor of Labor's office. [30] Funds are appropriated by the Department of Labor from its various programs to pay for District 40. Without this federal money, there would be no program.

Indisputably, all of the foregoing characteristics are federal in nature. Yet not one was mentioned in the Court's opinion. Under these circumstances, it is difficult to comprehend how

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[28] Appendix B at 13a.

[29] Undoubtedly taken from the federal funds given to the District.

[30] In light of the number of cases heard by this Court in recent years which arose out of District claims, we assume the adjudicative cost is high. *See, U.S. Industries/Federal Sheet Metal, Inc.* v. *Director, Office of Workers' Compensation Programs*, ___ U.S. ___ (Decided March 23, 1982); *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261 (1980); *Potomac Electric Power Co.* v. *Director, Office of Workers' Compensation Programs*, 449 U.S. 268 (1980).

the Court of Appeals could conclude that this program was simply a local function performed by federal officials. All of the clear facts demand a finding of federal function in this instance. As a consequence, the enactment of the Act of 1979 and the repeal of a Congressionally passed statute, § 36-501 *et seq.*, represent an obvious interference with and a usurpation of a federal function in contravention of § 1-233(a)(3). Without doubt, the District has exceeded its authority under the Self-Government Act and gone well beyond the intent of Congress.

In its attempt to remain within the confines of § 1-233(a)(3), the Court of Appeals found that § 36-501 was an act which applied exclusively to the District. Again, however, the Court overlooked contrary facts and case law in order to save the Workers' Compensation Act of 1979. The language of § 36-501 affords the broadest possible extraterritorial application:

> The provisions of the Longshoremen's and Harbor Workers' Compensation Act, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

The foregoing cannot be confined, as a practical matter, to the physical boundaries of the District. The simple geopolitical fact is that many employees who work in the District on a regular basis (1) are not District residents; (2) work a portion of the time for their District employers outside of the city; and (3) work in the District for employers whose places of business lie outside the District. The Courts, including this Court, have long recognized the extraterritorial application of § 36-501 due to the peculiar nature of this region and the relatively small size of the District itself. *See Thomas* v. *Washington Gas Light Co., supra; Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947); *Director, Office of Workers' Compensation*

Programs v. *National Van Lines, Inc.*, 198 U.S. App. D.C. 239, 613 F.2d 972 (1979); *Director, Office of Workers' Compensation Programs* v. *Boughman*, 178 U.S. App. D.C. 132, 545 F.2d 210 (1976); *Amalgamated Association of Street, etc. Employees* v. *Adler*, 119 U.S. App. D.C. 274, 340 F.2d 799 (1964).

In the *National Van Lines* case, which involved the District, Virginia, New York and Illinois, the United States Court of Appeals recognized that "[t]he most significant geographical division is the *metropolitan* Washington area." [31] This case affirms the long standing view that, for purposes of jurisdiction, the physical borders of the District have no meaning. It is a "metropolitan area" concept which applies with respect to both employees and employers who move in and out of the District's boundaries during the course of work activity. To restrict the application of § 36-501 to the confines of the District would be to equate it with such self-limiting laws as sales tax legislation.

In a related view, the extraterritorial aspect exists on a conceptual level as well. When the federal courts interpret the Longshoremen's Act, their rulings apply with equal force nationwide. The same is true even if the case arose in the District under § 36-501. No better example exists than this Court's decision in *Potomac Electric Power Co.* v. *Director, Office of Workers' Compensation Programs*, 449 U.S. 260 (1980). There, this Court ruled, in a case arising under the extension of the Longshoremen's Act to the District, that the benefits payable under the scheduled injury list, 33 U.S.C. §§ 908(c)(1-20), were exclusive. What is unique is that this case has effect in the District and in any other jurisdiction in which Longshoremen's Act claims may arise. No state compensation act, be it Maryland, Virginia or California, can have this extrajurisdictional impact. [32] State laws and judicial interpretations

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[31] 613 F.2d at 975 (Emphasis supplied).

[32] The same is true of cases heard in the lesser federal courts. *See* for example, *Hastings* v. *Earth Satellite Corporation*, 202 U.S. App.

thereof are obviously limited in applicability while federally imposed laws, such as the Longshoremen's Act extension to the District, are not so circumscribed. Thus, a court decision regarding an arm injury in Maryland has no precedential effect upon a similar case in Utah. By contrast, any decision arising under the substantive provisions of the District's extension will be binding on similar cases in California, New York or wherever the Longshoremen's Act or any of its extensions are imposed. No clearer statement of the principle of national in scope exists, contrary to the local view of the panel below.

In a further attempt to bolster its finding that the Act of 1979 was exclusively local in nature, the Court of Appeals relied heavily on the obscure case of *Gudmundson* v. *Cardillo*, 75 U.S. App. D.C. 230, 126 F.2d 521 (1942). In that instance, the United States Court of Appeals for the District referred to the District's extension as a "wholly separate and distinct law" [33] based upon the dichotomy between Congress' Article I and Article III powers. Petitioner asserts that the panel below interpreted the case in isolation and without reference to the general state of the law in 1942. A more careful examination would have exposed the true reason for *Gudmundson's* existence.

The ultimate conclusion of the *Gudmundson* Court was that the separate nature of the two acts eliminated the requirement of a trial *de novo* in the District Court (as directed by *Crowell* v. *Benson*, *supra*) in the District of Columbia while still mandating it under the traditional Longshoremen's Act. Essentially, the federal Court of Appeals was intent on eliminating the trial *de novo* on jurisdictional issues as outmoded and unnecessary

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D.C. 85, 628 F.2d 85 (1980), *cert. denied*, 449 U.S. 905 (1980); *Director, Office of Workers' Compensation Programs* v. *National Van Lines*, *supra*; *Haughton Elevator Co.* v. *Lewis*, 572 F.2d 447 (4th Cir. 1978); and *Dillingham* v. *Massey*, 505 F.2d 1126 (9th Cir. 1974).

[33] 75 U.S. App. D.C. at 234, 126 F.2d at 525.

and utilized the artifice of the local versus federal dichotomy as a basis. Evidence of this fact is found in the Court's obvious disregard of *Metropolitan Casualty Insurance Co.* v. *Hoage*, 72 F.2d 175 (D.C. Cir. 1934), in which a trial *de novo* was held, pursuant to *Crowell* v. *Benson*, on the jurisdictional issue of the employer-employee relationship. By 1942, however, the *Crowell* doctrine was on the wane, with courts preferring to ignore the trial *de novo* while permitting the deputy commissioner [34] to become the fact finder in all instances. While *Crowell* v. *Benson* has never been specifically overruled, it is a case which was largely ignored within a decade or so of its issuance, [35] although occasional attempts were made in the years immediately preceding the 1972 amendments to resurrect it. [36]

As a consequence, although the *Gudmundson* case may appear to provide some support for the ruling of the panel below, it bears no true relationship to the issue at hand. Indeed, if one were to accept the literal language of *Gudmundson*, then the same would be required of later cases such as *Travelers Insurance Co.* v. *Cardillo*, 78 U.S. App. D.C. 392, 141 F.2d 362 (1944) and *In Re: District of Columbia Workmen's Compensation Act* which refer specifically to the Longshoremen's Act as being adopted for the District without any reference whatsoever to Article I obligations. [37] In the latter case, for example, the Court of Appeals noted that the injured

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[34] Administrative law judges become the prime fact finders subsequent to the 1972 amendments to § 919(d) of the Longshoremen's Act, 33 U.S.C. § 919(d). All formal administrative hearings are now conducted by such judges.

[35] *See* for example, *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 640 (1947).

[36] *Associated Indemnity* v. *Shea*, 455 F.2d 913 (5th Cir. 1972) and *Rockport Yacht Supply Co., Inc.* v. *Hollis*, 371 F. Supp 1229, 1231 (S.D. Tex. 1973).

[37] *See* 141 F.2d at 364 and 551 F.2d 1077, 1078-1081.

worker had filed his claim under the Longshoremen's Act; it proceeded to review the case at length as one arising under the Act even though the injury did not occur upon the navigable waters of the United States, as the *Gudmundson* court would have required.

In summary, then, *Gudmundson* must be viewed as having little to offer in this instance in light of its historical setting and subsequent case law.

Finally, it is Petitioner's position that the action taken by the Council not only interfered with "federal functions" within the meaning of § 1-233(a)(3), but also affronts the Supremacy Clause of the Constitution, U.S. CONST. Art. VI, cl. 2. While attempts are frequently made to reconcile state and federal statutory schemes to avoid this confrontation, federal courts have been far less reluctant to strike down local legislation when it impacts directly on federal operations. [38] As stated by the United States Court of Appeals in a recent case involving the District and the Self-Government Act:

> . . . Inasmuch as such laws substantially impede federal activities or directly place "a prohibition on the federal government" [citation omitted] the [Supreme] Court has treated them as presumptively invalid under the Supremacy Clause: "where congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation." [39]

That decision uses phrases such as "a clear congressional mandate" and "specific congressional action" [40] to denote the basic

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[38] *Sperry* v. *Florida*, 373 U.S. 379, 383-5 (1963); *California Pub. Util. Comm'n.* v. *United States*, 355 U.S. 534, 544 (1956); *Johnson* v. *Maryland*, 254 U.S. 51, 55 (1920); *In re Neagle*, 135 U.S. 1 (1890).

[39] *Don't Tear It Down* v. *Pennsylvania Ave. Dev. Corp.*, 206 U.S. App. D.C. 122, 642 F.2d 527, 534 (1980), citing *Hancock* v. *Train*, 426 U.S. 167, 169 (1976) and *Mayo* v. *United States*, 319 U.S. 441, 447-8 (1943).

[40] 642 F.2d at 536.

requirement for upholding local legislation in the face of the Supremacy Clause. Reference to Arguments I and II, *supra*, demonstrates the lack of such express congressional authority in the instant case. Thus, where local legislation such as the Act of 1979 not only interfere with federal functions but repeals a congressionally enacted statute, it must fall.

Petitioner therefore respectfully asserts that the enactment of the Workers' Compensation Act of 1979 violated not only the prohibitory provisions of the Self-Government Act in § 1-233(a)(3), but also ran afoul of the Supremacy Clause of the Constitution. For reasons best known to the panel below, this issue was erroneously decided and now presents itself as appropriate for review by this Honorable Court.

IV

The District Of Columbia Court Of Appeals Erred In Ruling That The Workers' Compensation Act Of 1979 Did Not Violate The Prohibitions Contained in §§ 1-233(4) And (8) Of The Self-Government Act

Among the other express prohibitions contained in § 1-233 of the Self-Government Act are those regarding the two court systems in the District. Two specific subsections remove authority from the District to:

> (4) [e]nact any act, resolution, or rule, with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia Courts);
>
> (8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District Courts . . .

In its ruling in favor of the District, the Court of Appeals reviewed these subsections, along with the District of Columbia Court Reform and Criminal Procedure Act, D.C. Code 1981, §§ 11-101 *et seq.* The Court concluded that the net effect of the Act of 1979 and the Court Reform Act was to permit the assumption by Superior Court and the Court of Appeals of the

cases and duties arising under § 36-322(b)(3) and § 36-322(c) of the Act of 1979. Formerly, that authority reposed in the United States District Court (enforcement) under 33 U.S.C. § 918(a) and the United States Court of Appeals for the District (appellate jurisdiction), pursuant to 33 U.S.C. § 921(c) and (d). The panel below decided that the allegedly local nature of the Council's action justified the exchange of jurisdiction. Petitioner contends that this approach fails to address the point raised at oral argument and in all briefs.

As noted above, § 921(c) of the Longshoremen's Act extension 33 U.S.C. § 921(c), confers exclusive jurisdiction for appeals taken from the Benefits Review Board in the United States Court of Appeals for the District of Columbia. This is a matter of exclusive jurisdiction not subject to alteration by any legislative body other than Congress. If any question existed as to which court can claim jurisdiction over appeals, the case of *Director, Office of Workers' Compensation Programs* v. *National Van Lines, supra*, eliminates it. In that case, the Court stated:

> . . . Consistent with the above authorities we hold that, for purposes of appellate jurisdiction, injuries giving rise to claims under 36 D.C. Code, § 501 'occur' within the territorial jurisdiction of the United States Court of Appeals for the District of Columbia Circuit . . . [41]

Similarly, in *In re Matter of District of Columbia Workers' Compensation Act, supra*, the Court of Appeals indulged in a lengthy review and analysis of the effects of the 1972 amendments to the Longshoremen's Act on whether the federal court should hear appeals after the effective date of those amendments. [42]

Viewing these cases, as the Court below failed to do, it can be seen that repeal of § 36-501 resulted in another impermissible

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[41] 613 F.2d at 979 n. 20.

[42] 554 F.2d at 1078-81.

infringement on a federal function as well as being in contravention of the specific prohibitions contained in §§ 1-233(a)(4) and (8) of the Self-Government Act. Without express Congressional authority, the District has removed an entire class of cases from the federal court system and placed them under the auspices of the District's local courts. It is not sufficient to state that these are "contested cases" which the local courts can review. Such statements are but half truths, ignoring the distinctly federal quality of cases which arose under the Longshoremen's Act extension to the District of Columbia. The resort to the concept of localism as a justification for the repeal of § 36-501 is insufficient to support the Council's action.

It is interesting to note that the opinion of the Court below in response to the parties' *en banc* petition sets forth a certain amount of concern over the three judge panel's brief dismissal of the issue of the violation of §§ 1-233(a)(4) and (8). Associate Judge Belson, writing on behalf of himself and three other judges, expressed his concern as follows:

> It may well be that most or all of the members of the court *en banc* would adopt the rationale and result of the division's carefully reasoned opinion confirming the power of the District of Columbia Council to adopt the disputed legislation. However, if this court is to render a decision which confirms the authority of the Council to transfer cases from the federal system to the District of Columbia system, I feel that it should be rendered by the court *en banc* rather than by a division. [43]

This statement is something less than an endorsement of the Council's action and echoes the statements set forth in Argument II prior to passage of the Act of 1979. Clearly, a significant portion of the Court had doubts, leaving the impression that transfer of jurisdiction from the federal to the local courts was ill-founded.

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[43] Appendix A at 2a. The Court denied the *en banc* petition based upon an evenly divided vote of the judges in active service.

Petitioner respectfully suggests that a thorough examination of the Longshoremen's Act case law discussed *supra* also will lead to the conclusion that interference with the federal courts occurred. The entire discussion concerning the extra-territorial effect of the law is equally relevant to this Argument. Clearly, only decisions emanating from the federal court system can have nationwide impact, including those issued by the United States Court of Appeals for the District of Columbia under § 36-501. Consequently, it is an ineluctable conclusion that any law which alters the jurisdiction of these courts contravenes, by definition, the several specific prohibitions contained in the Self-Government Act.

In sum, regardless of the approach taken, it is evident that the Workers' Compensation Act of 1979, as passed by the Council of the District of Columbia, redefined the authority of both the federal and local courts. Such action was impermissible under the terms of §§ 1-233(a)(4) and (8). The imprimatur granted by the Court of Appeals was in error and is deserving of review by this Honorable Court.

CONCLUSION

For each and all of the reasons set forth above, Petitioner respectfully urges this Honorable Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 80-1311

DISTRICT OF COLUMBIA,
Appellant,

v.

THE GREATER WASHINGTON CENTRAL LABOR COUNCIL,
Appellee.

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON,
Intervenor.

No. 80-1312

THE GREATER WASHINGTON BOARD OF TRADE,
Appellant,

v.

DISTRICT OF COLUMBIA, et al.,
Appellees.

Before: NEWMAN, *Chief Judge;* KELLY, KERN, NEBEKER, MACK, FERREN, PRYOR,* and BELSON, *Associate Judges;* and GALLAGHER,* *Associate Judge, Retired.*

Filed April 28, 1982.

ORDER

On consideration of intervenor's petition for rehearing en banc and of the petition for rehearing and/or rehearing en banc filed by the Greater Washington Central Labor Council, it is

ORDERED for the merits division * that the petition for rehearing is denied. It appearing that there is an evenly divided vote among the judges in active service with this court, it is

FURTHER ORDERED that the petitions for rehearing en banc are denied.

PER CURIAM

Statement of *Associate Judge* BELSON, with whom *Associate Judges* KERN, NEBEKER, and FERREN join, concurring:

I favor rehearing en banc in this case. The plain fact is that the District of Columbia Workers' Compensation Act of 1979 [1] has effectively transferred a class of cases from the federal courts to the District of Columbia courts. [2]

It may well be that most or all of the members of the court en banc would adopt the rationale and result of the division's carefully reasoned opinion confirming the power of the District of Columbia Council to adopt the disputed legislation. However, if this court is to render a decision which confirms the authority of the Council to transfer cases from the federal system to the District of Columbia system, I feel that it should be rendered by the court en banc rather than by a division.

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[1] D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*).

[2] Prior to the enactment of the District of Columbia Workers' Compensation Act, workmen's compensation for the District of Columbia was governed by the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. §§ 901 *et seq.* (1976). D.C. Code 1973, § 36-501. The United States Secretary of Labor was responsible for administering the program. *Id.*, § 939. The United States Court of Appeals for the circuit in which the injury occurred had jurisdiction to review final orders of the Benefits Review Board. *Id.*, § 921(c). Jurisdiction to enforce the awards was vested in the United States District Court for the district in which the injury occurred. *Id.*, § 921(d). Under the new statutory scheme, that jurisdiction, to the extent it includes the review and enforcement of workman's compensation awards for private employees in the District of Columbia, has been transferred to the D.C. Court of Appeals and the Superior Court, respectively. D.C. Code 1981, §§ 36-322(b)(3), -322(c).

APPENDIX B

DISTRICT OF COLUMBIA,
Appellant,

v.

THE GREATER WASHINGTON
CENTRAL LABOR COUNCIL, AFL-CIO,
Appellee.

FOOD AND ALLIED SERVICE TRADES COUNCIL OF
METROPOLITAN WASHINGTON,
Intervenor.

THE GREATER WASHINGTON BOARD OF TRADE,
Appellant,

v.

DISTRICT OF COLUMBIA, et al.,
Appellees.

Nos. 80-1311, 80-1312.

District of Columbia Court of Appeals.

Argued April 24, 1981.

Decided Jan. 28, 1982

Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., with whom Judith W. Rogers, Corp. Counsel, Washington, D.C., was on the briefs, for appellant in No. 80-1311 and appellees in No. 80-1312.

Before HARRIS and PRYOR, Associate Judges, and GALLAGHER, Associate Judge, Retired.

PRYOR, Associate Judge:

This case presents the issue of whether the District of Columbia Council exceeded its legislative authority under the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code 1981, §§ 1-201 *et seq.*, (Self-Government Act), when it enacted the District of Columbia

Workers' Compensation Act of 1979, D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*), and repealed the existing workmen's compensation legislation applicable to the private sector in the District of Columbia. The trial court concluded that it did. In addition, we are asked to decide whether the trial court abused its discretion in denying the Greater Washington Board of Trade's motion for leave to intervene in the action below. We conclude that the trial court erred in ruling that the Council exceeded its authority in enacting the Workers' Compensation Act, and that the trial court did not abuse its discretion in denying Greater Washington Board of Trade's motion to intervene. Accordingly, we reverse in part and affirm in part.

I

An understanding of several pertinent statutes is necessary to our analysis of the Council's enactment of the Workers' Compensation Act. Before reaching the issue of whether the Council exceeded its legislative authority in passing the Workers' Compensation Act, we review the history of workmen's compensation in the District of Columbia, the Self-Government Act, and the new District of Columbia Workers' Compensation Act.

A. The Longshoremen's and Harbor Workers' Compensation Act.

Since 1928, workmen's compensation for the District of Columbia has been governed by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.* (1976) (Longshoremen's Act). In 1927, in response to the continuing concern about compensation for maritime workers injured on navigable waters, Congress enacted the Longshoremen's Act, "a modern and reasonable workmen's compensation law for certain local maritime workers who are injured while loading or unloading or repairing vessels at the dock—provided their injury occurs while on board the vessel." S.Rep. No.852, 70th Cong., 1st Sess. 1 (1928).

The Longshoremen's Act vests the responsibility for the administration of the workmen's compensation program in the United States Secretary of Labor. 33 U.S.C. § 939 (1976). The administrative procedure provided by the Act consists of a three-tier system. At the first stage, a deputy commissioner issues a recommendation as to whether the workmen's compensation claim should be paid. *Id.*, § 919(a)(c). At this point, either party may request a formal hearing before a Department of Labor administrative law judge. *Id.*, § 919(d) (Supp. III 1979). Review of the administrative law judge's formal order is provided by the Benefits Review Board. *Id.*, § 921(b) (1976, Supp. III 1979). Persons adversely affected by the final order of the Benefits Review Board may appeal to the United States Court of Appeals for the circuit in which the injury occurred. *Id.*, § 921(c) (1976). In the event that an employer fails to comply with a compensation award, the beneficiary of the award or the deputy commissioner making the order may seek enforcement in the Federal district court for the judicial district in which the injury occurred. *Id.*, § 921(d) (1976).

Although public employees of the District of Columbia government were protected by a federal workmen's compensation program at the time of the passage of the Longshoremen's Act, *see* 5 U.S.C. § 8139 (1976), no similar program existed for their counterparts in the local private sector. Between 1921 and 1926, several bills creating workmen's compensation programs for private employees in the District of Columbia were introduced in Congress. However, "disagreements over the system of insurance and the plan of administration led to a legislative deadlock." S.Rep.No.852, 70th Cong., 1st Sess. 1 (1928). Recognizing that the Longshoremen's Act provided a solution to its inability to agree on a program to cover private employees in the District of Columbia, *see generally id.*, at 2; H.R.Rep. No.859, 69th Cong., 1st Sess. 1 (1926), Congress passed a workmen's compensation law for the District of Columbia, Act of May 17, 1928, ch. 612, § 1-3, 45 Stat. 600 (1928) (Workmen's Compensation Act of 1928) (codified at D.C.Code 1973, §§ 36-501, -502), which extended the provisions of the

federal statute to cover the private employment sector. Section 36-501 provided in pertinent part:

> The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs. . . .

This section incorporated both the substantive and procedural provisions of the Longshoremen's Act. *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, 198 U.S.App.D.C. 239, 246, 613 F.2d 972, 979 (1979), *cert. denied*, 448 U.S. 907, 100 S.Ct. 3049, 65 L.Ed.2d 1136 (1980).

B. The Self-Government Act

The United States Constitution vests Congress with the exclusive legislative authority for the District of Columbia. U.S. Const. art. I, § 8, cl. 17. In 1973, Congress passed the Self-Government Act to "relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code 1981, § 1-201(a). Subject to its retention of the ultimate legislative authority over the District of Columbia, Congress delegated certain specific legislative powers to the District of Columbia government. *Id.* These legislative powers "extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of [the] Act. . . ." *Id.*, § 1-204. Congress expressly reserved its right

> to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by [the] Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of [the] Act and any act passed by the Council. [*Id.*, § 1-206.]

In addition, Congress placed several explicit limitations on the Council's legislative authority. The specific limitations which are pertinent to the issue before us are enumerated in § 1-233:

(a) The Council shall have no authority to pass any act contrary to the provision of this Act except as specifically provided in this Act, or to—

(3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) [e]nact any act, resolution, or rule with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);

(8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia[.]

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

C. Workers' Compensation Act of 1979

On May 6, 1980, the District of Columbia Council passed the Workers' Compensation Act of 1979. Following the approval of Mayor Marion S. Barry, Jr., this legislation was forwarded to Congress on May 15, 1980, for the 30-day review period required by D.C. Code 1981, § 1-233(c)(1). On July 1, 1980, in the absence of congressional disapproval, the Workers' Compensation Act officially became law. *See* 27 D.C. Reg. 2974 (1980). Pursuant to § 47 of the Act, it was scheduled to take effect on October 1, 1981.

The Workers' Compensation Act provides an administrative scheme for compensation claims in the private sector of employment. See *generally* 27 D.C. Reg. 2503 (1980). It provides

compensation for work-related injuries or death to employees of private businesses principally located in the District of Columbia. D.C. Code 1981, § 36-303. Any party in interest adversely affected by a compensation award entered by the Mayor may petition for review to the District of Columbia Court of Appeals. *Id.*, § 36-322(b)(3). If an employer fails to comply with a compensation order, the beneficiary of the award or the Mayor may seek its enforcement in the Superior Court of the District of Columbia. *Id.*, § 36-322(c). Section 46 of the Act repeals the existing workmen's compensation law, enacted by Congress in 1928 to cover private employees in the District of Columbia.

II

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, an organization comprised of over 150 unions representing workers regularly employed in the Washington metropolitan area, and three employees from the private sector, brought suit against the District of Columbia government seeking a declaratory judgment as to the validity of the Workers' Compensation Act and injunctive relief against its enforcement. Both parties filed motions for summary judgment. On September 26, 1980, the trial court ruled that the Workers' Compensation Act was null and void as violative of §§ 1-233(a) and (b) of the Self-Government Act. The court, however, denied without prejudice the application for injunctive relief.

First, the trial court noted that in the absence of an existing federal workmen's compensation law, it well might have "conclude[d] that the Council had the power to fill the vacuum by appropriate legislation." In light of Congress' failure to repeal the existing legislation, however, the trial court held that Congress had not empowered the Council to effect such a repeal and a transfer of powers. The court noted that, under the Self-Government Act, Congress expressly provided for the transfer of public employment services from the United States Department of Labor to the District of Columbia government,

carefully detailing the mechanics of transfer and scrupulously safeguarding the employment rights of federal employees then engaged in that function. The trial judge concluded that Congress' express transfer of workers' compensation for government employees to the District of Columbia, coupled with its failure to effect a similar transfer of workmen's compensation for private employees, created an inference that Congress did not wish to repeal the federal legislation relating to private workmen's compensation.

Furthermore, the court found that the new law violated several of the explicit limitations on the District's legislative authority embodied in §§ 1-233(a) and (b) of the Self-Government Act. The court ruled that the City Council violated § 1-233(a)(3) (prohibiting the local legislature from amending or repealing any act of Congress concerning the functions or property of the United States), § 1-233(a)(4) (prohibiting the Council from enacting any act, resolution or rule affecting the organization or jurisdiction of the local District of Columbia courts), § 1-233(a)(8) (prohibiting any act or regulation relating to the United States federal courts in the District) and § 1-233(b) (limiting the authority of the District government over any federal agency to that vested in the Commissioner prior to January 2, 1975).

III

Appellants contend that the trial court erred in declaring the Workers' Compensation Act null and void. We agree that the Council acted within its delegated authority when it enacted the Workers' Compensation Act.

A. Statutory Interpretation

The trial court acknowledged that as part of the Self-Government Act, Congress transferred certain functions of the Secretary of Labor with respect to public employment services for the District of Columbia to the local government. The court reasoned that since Congress expressly provided for the transfer of those services, but did not provide for the

transfer of the Department of Labor's administration of private workmen's compensation claims, its intention was to preclude the Council from interfering with the latter.

The express transfer by Congress of certain public employment services from the United States Department of Labor to the District government, in the absence of a concurrent transfer of private employment workmen's compensation, however, does not reflect a congressional intent to prohibit the local government from legislating with respect to private workmen's compensation. Rather, the transfer of the public workmen's compensation program to the District of Columbia required express congressional legislation since it was entrusted to the Department of Labor by a federal statute that is not applicable exclusively to the District of Columbia. *See* 5 U.S.C. §§ 8101 *et seq.* (1976); D.C. Code 1981, § 1-233(a)(3). On the other hand, the existing workmen's compensation program for private employees, the Workmen's Compensation Act of 1928, is a congressionally enacted local statute that deals exclusively with District of Columbia matters. Consequently, no express congressional legislation is required to effect the transfer. *See* Part B, *infra*.

Nothing in the language or the legislative history of the Self-Government Act indicates Congress' intent to prohibit the District from enacting legislation concerning workmen's compensation for the private sector. The absence of an express transfer of private workmen's compensation to the District of Columbia government indicates that Congress chose not to transfer the administration of private workmen's compensation at that time. It does not indicate an intention to preclude local legislation pertaining to workmen's compensation for private employees at a later time under the legislative authority granted to the District of Columbia to D.C. Code 1981, § 1-204.

B. Review of § 1-233(a)(3)

The trial court ruled that the Workers' Compensation Act violated § 1-233(a)(3) of the Self-Government Act, which pro-

hibits the Council from "enact[ing] any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." The court reasoned that since the United States Department of Labor has been responsible for administering the local workmen' compensation program, and the federal courts are charged with enforcing and reviewing workmen's compensation claims, the repeal of D.C. Code 1973, § 36-501, affected a function of the United States.

Although the Self-Government Act does not define the term "functions of the United States" as used in § 1-233(a)(3), it reasonably may be surmised from the language "which is not restricted in its application exclusively in or to the District . . ." that Congress intended in § 1-233(a)(3) to withhold from local officials the authority to affect or to control decisions made by federal officials in administering federal laws that are national in scope as opposed to laws that relate solely to the District of Columbia. We are not persuaded that Congress intended that performance of a local function by federal officials prior to the Self-Government Act would transform the function into a "function of the United States" for purposes of § 1-233(a)(3).

The legislative history further suggests that the language was inserted to safeguard the operations of the federal government on the national level:

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas . . . [House Comm. on The District of Columbia, 93d Cong., 2d

Sess., D.C. Executive Branch Proposal for Home Rule Organic Act 182 (Comm. Print 1973).][1]

Thus, what Congress sought to protect by inserting this limitation was the integrity of the federal domain as it relates to administration of federal legislation having national implications.

The Workmen's Compensation Act of 1928 is a local law enacted by Congress which was restricted in its application "exclusively in or to the District," rather than a federal law which is national in scope. When Congress extended the coverage of the Longshoremen's Act to include private employees in the District of Columbia, it did not establish a local administrative authority. Rather, for purposes of convenience, the Secretary of Labor was given the authority to administer the District of Columbia compensation program. *See* 33 U.S.C. § 939(b) (1976); S.Rep.No.852, 70th Cong., 1st Sess. 2 (1928). Despite the Secretary of Labor's participation in the administration of D.C. Code 1973, § 36-501, the Act always has been regarded by the courts as a "local act" and construed as a state law. *See generally Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 266, 100 S.Ct. 2647, 2653, 65 L.Ed.2d 757 (1980) (plurality opinion); *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476, 67 S.Ct. 801, 806, 91 L.Ed. 1028 (1947); *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, *supra*, 198 U.S.App.D.C. at 245 n.20,

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[1] *See also D.C. Government Organization: Hearings on Self-Determination for the District of Columbia*, Part 2, 93d Cong., 1st Sess. 52 (1973) (statement of John Nevius, former Chairman of the District of Columbia City Council):

> For the purposes of identifying these Federal functions, we are speaking basically of three things: First, the function regarding Federal buildings and properties; second, the conduct of Federal business—and there you get into the whole complicated matter of Federal functions versus local functions or Federal interests versus local interests, admittedly not easy to distinguish—and third, the function of international relations and matters concerning the diplomatic corps.

613 F.2d at 978 n.20. In distinguishing the Longshoremen's Act from the local workmen's compensation program which it encompasses, the United States Court of Appeals for the District of Columbia Circuit stated in *Gudmundson* v. *Cardillo*, 75 U.S.App.D.C. 230, 234, 126 F.2d 521, 525 (1942):

> The case we have does not arise under the Longshoremen's Act, though doubtless it might if the injury had occurred on a vessel in the Potomac River, tied to a Washington dock. True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other—the local act—Congress was exercising the powers granted in Sec. 8 of the Art. I, and these powers, . . . include . . . the powers of the State[,] . . . a delegation which . . . embraces full and unlimited jurisdiction . . . to provide for the general welfare of citizens within the District of Columbia. . . .

Moreover, it should be noted that no federal funds are involved in the Department of Labor's administration of § 36-501. Rather, the administrative cost is paid with District of Columbia funds. *See* D.C.Code 1978 Supp., § 36-503 ("There are authorized to be appropriated such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this chapter.")

Thus, the Secretary of Labor administers two separate workmen's compensation programs. The first of these, created by the Longshoremen's Act, is a national program passed by Congress in discharge of its Article I powers; the second, the Workmen's Compensation Act of 1928 was enacted as a local law pursuant to the plenary authority of Congress over the District of Columbia. U.S.Const. art. I, § 8, cl. 17; *Gudmundson* v. *Cardillo*, *supra*, 75 U.S.App.D.C. at 234, 126 F.2d at

525 [2] Therefore, we find that the function performed by the Secretary of Labor in the administration of § 36-501 is a purely local one. Consequently, we conclude that the trial court erred in ruling that § 1-233(a)(3) was violated by the enactment of the District of Columbia Workers' Compensation Act of 1979.

C. Review of § 1-233(a)(4)

The trial court also held that the Council increased the jurisdiction of the District of Columbia courts in violation of § 1-233(a)(4) of the Self-Government Act by vesting the Superior Court with the right to enforce compensation awards and this court with the authority to review final compensation orders. *See* D.C.Code 1981, §§ 36-322(b)(3), (c). Section 1-233(a)(4) of the Self-Government Act states that "[t]he Council shall have no authority to . . . [e]nact any act . . . with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of District of Columbia courts). . . ." We find that the local legislature did not affect impermissibly the jurisdiction of the local courts by enacting the Workers' Compensation Act.

Section 36-322(c) of the Workers' Compensation Act gives the Superior Court authority to use its equitable powers to enforce compensation awards. Under D.C. Code 1981, § 11-921(a), "the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." *See Andrade* v. *Jackson*, D.C.App., 401 A 2d 990, 992 (1979). Within the general equitable powers of the court is the authority to enforce orders of the Mayor and of administrative agencies. Thus, the enforcement of a compensation order of the Mayor or the administrative agency delegated the au-

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[2] The repeal of D.C. Code 1973, §§ 36-501, -502 and *id.*, 1978 Supp., § 36-503, by the Council has no impact on the functions of the United States Department of Labor in the administration of the Longshoremen's Act as it relates to the maritime industry nationally. The Council neither amended nor repealed any provision of that Act.

thority to issue such an order would fall within the equitable jurisdiction presently vested in the Superior Court.

Similarly, the jurisdiction of this court would not be expanded impermissibly by § 36-322(b)(3) of the Act. That section provides for judicial review of compensation orders pursuant to the District of Columbia Administrative Procedure Act (DCAPA), D.C.Code 1981, §§ 1-1501 to -1529. As stated in D.C.Code 1981, § 11-722, "[t]he District of Columbia Court of Appeals has jurisdiction . . . to review orders and decisions . . . in accordance with the District of Columbia Administrative Procedure Act. . . ." In *Capitol Hill Restoration Society, Inc.* v. *Moore*, D.C.App., 410 A.2d 184, 186 (1979), we acknowledged that our jurisdiction to review administrative actions under the Administrative Procedure Act must arise in the form of a "contested case" as defined in the DCAP.[3] "Under our decisions, in order for a matter to be a contested case, it must involve a trial-type hearing which is required either by statute or by constitutional right." *Capitol Hill Restoration Society, Inc.*, *supra*, 410 A.2d at 187. Review by this court of final decisions relating to compensation orders rendered by the Mayor would arise under the contested case provision of the DCAPA because § 36-322(b) of the Workers' Compensation Act provides that the Mayor shall order that a "hearing" be conducted upon application of any party. Accordingly, this court will review compensation claims by virtue of its preexisting jurisdiction to review administrative proceedings. Therefore, the Workers' Compensation Act does not violate § 1-233(a)(4) of the Self-Government Act.

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[3] D.C. Code 1981, § 1-1502(8), provides in pertinent part:

> The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law . . . or by constitutional right, to be determined after a hearing before the Mayor or before an agency . . .

D. Review of § 1-233(a)(8)

The trial court also found that § 1-233(a)(8) of the Self-Government Act was violated by enactment of the Workers' Compensation Act since under the Longshoremen's Act the United States district courts have authority to enforce compensation awards and the United States courts of appeals have the authority to review final compensation orders. *See* 33 U.S.C. §§ 921(c), (d) (1976). Section 1-233(a)(8) prohibits the Council from passing any legislation relating to the local federal district court or any other court of the United States in the District of Columbia. We conclude that the trial court erred in ruling that the jurisdiction of the federal courts impermissibly was affected by the Workers' Compensation Act.

In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act, D.C.Code 1981, §§ 11-101 *et seq.* (Court Reform Act), to establish a dual court system in this jurisdiction similar to the state court systems. *Thompson* v. *United States*, 179. U.S.App.D.C. 76, 79 n.14, 548 F.2d 1031, 1034 n.14 (1976). It was Congress' intention to alleviate the Article III court's burden of adjudicating local matters and thus to permit those courts to devote their attention to matters having national implications. *Palmore* v. *United States*, 411 U.S. 389, 408-09, 93 S.Ct. 1670, 1681-82, 36 L.Ed.2d 342 (1973). The Court Reform Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia and vested these courts with the authority to decide legal issues which solely affect the District of Columbia. *See, e.g., Andrade* v. *Jackson, supra*, 401 A.2d at 992 ("in establishing [a] unified local court system, Congress divested the federal courts of jurisdiction over local matters, restricting those courts to those matters generally viewed as federal business, . . . and conferred upon the Superior Court the jurisdictional power to adjudicate local civil actions.") (footnote omitted); *Reichman* v. *Franklin Simon Corp.*, D.C.App., 392 A.2d 9, 12-13 (1978) ("D.C. Code 1973, § 11-921 gives the superior court plenary jurisdiction over civil matters brought in the District of Columbia, and correspondingly limits the civil

jurisdiction of the District Court to those special matters of which District Courts nationwide may take cognizance.") (footnote omitted). By repealing the Workmen's Compensation Act of 1928, the Council has not decreased the jurisdiction of the United States courts in the District of Columbia. Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. The Council's action merely repealed the congressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compensation Act, the local legislature did not redefine the authority of the federal courts to rule on workmen's compensation claims under the Longshoremen's Act in violation of § 1-233(a)(8).

E. Review of § 1-233(b)

As another basis for striking down the workmen's compensation legislation enacted by the Council, the trial court ruled that § 1-233(b) of the Self-Government Act was violated when the Council eliminated a function performed by the Department of Labor under the Longshoremen's Act. Section 1-233(b) states in part: "Nothing in this Act shall be construed as vesting in the District government any greater authority over . . . any federal agency, than was vested in the Commissioner prior to January 2, 1975." In enacting this provision, Congress sought to protect the federal interest by "prohibit[ing] the Council from exceeding its present authority over . . . any other Federal agency." House Comm. on the District of Columbia, 93d Cong., 2d Sess., Title VI—Reservation of Congressional Authority 1477 (Comm. Print 1973). We fail to see, however, how the Council's action in enacting local workmen's compensation legislation offends that provision of the Self-Government Act.

Enactment of the Workers' Compensation Act neither increases nor decreases the District's authority over the Department of Labor. The sole effect this legislation has on the Department of Labor is that one category of cases presently handled by that agency—namely, private sector workmen's compensation claims arising in the District of Columbia—no longer will be administered by the Secretary of Labor. However, in light of the congressional mandate to vest the local government with authority to legislate on local matters, the ability of the Council to enact local legislation which decreases the workload of federal agencies presently charged with local responsibilities does not constitute a proscribed exercise of authority over such agencies within the meaning of § 1-233(b).

IV

The Greater Washington Board of Trade, an incorporated trade association representing 1,400 retail and commercial firms doing business in the District of Columbia, also appeals the trial court's denial of its application to intervene. The Board sought intervention as of right, [4] or in the alternative, permissive intervention. [5] Although the court rendered its

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[4] Super.Ct.Civ.R. 24(a) states in part:

> Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

See Vale Properties, Ltd. v. *Canterbury Tales, Inc.*, D.C. App., 431 A.2d 11, 14-15 (1981); *Calvin-Humphrey* v. *District of Columbia*, D.C. App., 340 A.2d 795, 798 (1975).

[5] Super.Ct.Civ.R. 24(b) provides in pertinent part:

> Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

decision on the validity of the Workers' Compensation Act on September 26, 1980, the Board of Trade did not seek to intervene until a week after the court's ruling. Despite this delay, the court did not base its decision on the timeliness factor. *See Vale Properties, Ltd.*, v. *Canterbury Tales, Inc.*, D.C.App., 431 A.2d 11, 15 (1981); *Emmco Insurance Co.* v. *White Motor Corp.*, D.C.App., 429 A.2d 1385, 1386-88 (1981). Rather, as to Super.Ct.Civ.R. 24(a) (intervention of right), denial was premised upon the court's finding that appellant's interest was adequately represented by the District of Columbia. It stated:

> A careful review of the position taken by the intervenors does not reveal any conflict of interest or any essential difference in their position from that taken by the District of Columbia. What distinctions do exist involve primarily rhetorical differences, shifts in emphasis or variations in the choice of supporting authorities. Nothing in the moving papers submitted by the Intervenors convinces the Court that it should act otherwise than it has already done, or that it should alter or amend the position already taken in this cause. * * * The fact that the Court ultimately disagrees with the Defendant's [the District of Columbia's] position in no way diminishes the Court's respect for that position, nor the Court's conviction that the applicant's interest has been, is, and will be adequately and ably represented by the District of Columbia.

The court went on to rule that the circumstances presented did not warrant a different result with respect to Super.Ct.Civ.R. 24(b) (permissive intervention).

The Board of Trade contends that the trial court erred in denying its application for leave to intervene as of right, because the interest represented by the District government was different from the interest it sought to represent. Appellant asserts that the intrest represented by the District involved only the general governmental interest of defending a local legislative enactment, while the Board sought to represent the peculiar economic interests of its constituency. The Board argues that since neither of the parties below presented any evidence bearing on the economic impact of the existing law on

local employers, nor developed the legislative history of the Longshoremen's Act to the extent the Board sought to, it should have been allowed to present these matters to the court's attention.

In reviewing the denial of a motion to intervene as of right, we will reverse only if we conclude that a timely appellant was entitled to intervene as of right. *Vale Properties, Ltd.* v. *Canterbury Tales, Inc.*, *supra*, 431 A.2d at 14. In *Calvin-Humphrey* v. *District of Columbia*, D.C.App., 340 A.2d 795, 800 (1975), we stated that in cases in which the government is a party, the right to intervene on the side of the government should not be granted lightly, for "[i]n most cases we will presume that representation by such authorities is adequate, especially when the issue in controversy is one of policy vested in the discretion of the city government." The Board of Trade did not make the kind of showing necessary under *Calvin-Humphrey* to overcome the presumption that the District adequately was representing its interest. Appellant sought neither to assert a different claim or defense nor to obtain an outcome different from that sought by the District. We conclude that the Board of Trade and the District government sought to present the same claim, *i.e.*, the authority of the Council to legislate on workmen's compensation for the private employment sector, and that appellant's interest was represented adequately by the government.

The Board of Trade attempted to present evidence concerning the economic impact of the Longshoremen's Act on local employers, as well as some legislative materials, to justify the action taken by the Council with respect to the Workers' Compensation Act. There is no indication that such data would have had any impact upon the decision of the trial court. The authority of the local legislature to enact the Workers' Compensation Act is derived solely from the Self-Government Act, regardless of the Act's effect on annual premiums paid by employers for workmen's compensation insurance. Moreover, as to the additional legislative materials proffered by the Board of Trade, we note that in considering whether to grant its applica-

tion to intervene, the trial court reviewed that material and nevertheless found nothing to change the position it already had taken in the case. The trial court did not err in denying the Board of Trade's application for intervention as of right pursuant to Super.Ct.Civ.R. 24(a). Furthermore, given the facts and circumstances of this case, the court did not abuse its discretion in denying appellant permissive intervention under Super.Ct.Civ.R. 24(b).

Affirmed in part; reversed in part.

APPENDIX C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 9655-80

GREATER WASHINGTON CENTRAL
LABOR COUNCIL, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Washington, D.C.
Friday, September 26, 1980

The above-entitled action came on for a motions hearing before the Honorable JOHN F. DOYLE, Associate Judge, in Courtroom Number 15, commencing at approximately 2:44 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiffs:

JOSEPH H. KOONZ, JR., Esquire
MARK J. BRICE, Esquire
PATRICK M. REGAN, Esquire
Washington, D.C.

On behalf of the Defendant:

GARY FREEMAN, Esquire
Washington, D.C.

Darlene M. Leasure
Official Court Reporter Telephone: 727-1769

PROCEEDINGS
[Excerpt]

[4:10 p.m.]

[2] THE COURT: This is a suit by the Greater Washington Central Labor Council, AF of L-CIO, and three individual Plaintiffs against the District of Columbia, a municipal corporation.

The relief requested is a judgment, declaring Act—D.C. Act 3-188, known as the D.C. Workmen's Compensation Act of 1979, null and void and for injunctive relief against its enforcement.

The matter comes before the Court upon the motion of the Plaintiff for summary judgment, and the cross motion of the District of Columbia for summary judgment, iir in the alternative, to dismiss.

There is no genuine issue respecting the material facts that a Plaintiff, Greater Washington Central Labor Council, is an organization, comprising over 150 unions representing workers regularly engaged in employment in the District of Columbia, and that it is in addition a District of Columbia employer.

Next, that the Plaintiff, Robert Patterson [sic], Joslyn Williams, and William Saunders are employees regularly engaged in employment in the District of Columbia.

[3] Next, that the District of Columbia is a municipal corporation and is the governing body of the District of Columbia.

And, finally, that the District of Columbia Workmen's Compensation Act of 1979, D.C. Act 3-188, was passed by the Council of the District of Columbia on May the 6th, 1980, and was approved by Mayor Marion S. Barry, Jr., on May 14, 1980, and that thirty legislative days after the Act had been presented to—that the thirty legislative days after the Act had been presented to the Congress expired without Congressional disapproval.

There being no genuine issue of fact, what is presented, are pure questions of law.

The central question of law is, was the Council of the District of Columbia acting within its statutory authority when it enacted the D.C. Workmen's Compensation Act of 1979?

Now, the history of the Workmen's Compensation Act in the District of Columbia may here be briefly summarized.

In 1927 the Congress passed the Federal Longshoremen and Harbor Workers Act, 33 U.S.C. 901, *et sequitur*, and a year later in 1928 made it applicable to certain employments in the District of Columbia, [4] 36 D.C. Code, 501 and the following sections.

The workmen's compensation program of the District of Columbia is administered by the United States Department of Labor, through the Office of Workmen's Compensation Programs, District Office, in Washington, D.C. The program has some forty-two allocated and budgeted positions. Active cases are estimated at from eight thousand to twelve thousand. Administrative appellate procedures involve appeals to a Benefits Review Board, 33 U.S.C. 921. Judicial review of an order of this Board is permitted and must be made to the United States Court of Appeals for the District of Columbia Circuit, 33 U.S.C. 921c, and not the the District of Columbia Courts, *Harrington versus Moss*, 407 A.2d 658, 663. Enforce-

ment of orders must be made by application to the United States District Court for the District of Columbia, 33 U.S.C. 921d. The cases and rulings in respect of this Act over the long period of years are myriad.

In 1973 the then Secretary of Labor Brennan suggested to the Honorable Ancher Nelson of the House of Representatives, in response to the Congressmen's request for departmental views on the proposed District self-government and governmental reorganization act, that there be a transfer of administration of the [5] District of Columbia Compensation Act to the District of Columbia government.

In the same letter, the Secretary opposed a provision transferring from his responsibilties for the District of Columbia Employment Services, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees.

As the bill was enacted, however, the District of Columbia Self-Government Act took precisely the opposite course. It did transfer the functions respecting the District of Columbia Employment Service, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees to the District of Columbia government, in Title 2, Section 204 of the Act, but it did not transfer the workmen's compensation function involving private employment.

The extremely detailed planning used to resolve the difficult problems raised by the transfer of functions, which were made in this Act, including the steps taken to reserve the rights of the Labor Department employees affected, were described in detail to the Congress in the hearings before the District of Columbia committee of the House and the Senate by [6] Mr. Julian Dugas on June the 26th of 1974.

In May of 1979 the Honorable Marion S. Barry submitted for the consideration of the 96th Congress, in a letter to the Speaker of the House of Representatives, a draft bill designed to effect the transfer of the private workmen's compensation function.

I am advised by the Corporation Council that this bill was never formally introduced to the Congress.

In February of 1980 the Assistant Secretary of the Department of Labor transmitted to the Corporation Council a memorandum of the Departmental Solicitor giving the opinion that the District of Columbia Self-Government Act did not give the District of Columbia the authority to enact its own workmen's compensation program without Congressional repeal of the District of Columbia Workmen's Compensation Act. That is, of course, 36 D.C. Code 501.

The act of the District of Columbia Council here at issue followed.

In the act it will be noted that the Council establishes a new workmen's compensation structure and specifically repeals existing Federal legislation. The Act otherwise eliminates the judicial review function now held by the United States Court of Appeals for the [7] District of Columbia Circuit and places this function in the District of Columbia Court of Appeals.

The function of the United States District Court for the District of Columbia in the enforcement of the workmen's compensation orders is eliminated and this function transferred to the Superior Court of the District of Columbia.

Now, at the outset of analysis, it would be well to clear away any legal underbrush which might obscure the true issues which the Court believes are involved in the case.

First of all, the Court would like to deal with the question of ripeness capably raised by the District of Columbia. The Court, however, does not agree with counsel, certainly, as respects the relief of declaratory judgment because involved in here is the whole structure of employer employee rights in the workmen's compensation field. It does not believe that any requirement of justiciable case or controversy require that employers and employees in this vital field remain silent until the proposed effective date of this new bill. Since their rights are so fundamentally affected, both employers and employees,

common prudence would require that they move as rapidly as possible in order to examine and find out [8] and determine the validity of legislation which will govern them in the year 1981.

So accordingly, the Court feels that there is a justiciable case for controversy, that there is a case in which vital equitable interests holds that the parties involved hereto are the proper parties to the action, and that their respective rights are vitally involved.

Secondly, this Court desires to make it clear that it does not take a narrow view of the legislative powers of the District of Columbia Council. The legal nature and character of the District of Columbia government is that of a municipal corporation. Title—Section 717(a) of Title 7 of the Home Rule Act provides as follows. All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in Section 2 of the revised statutes relating to the District. Said corporation shall continue to be charged with all of the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, and privileges and immunities and assets respectively imposed upon and vested in said [9] corporation or the commissioner.

This essentially has been the consistent view which the Congress has taken of the nature of the District of Columbia government since the original legislation chartering it in 1801.

However, it has long been recognized that the Congress of the United States possesses, with respect to the District, all of the powers which a state would possess. Hence, the Congress can and often in the past has delegated to the District's government powers which elsewhere are normally and usually exercised by the state legislatures, rather than by city councils.

The Supreme Court has noted this extensively in the great case, the *District of Columbia against John R. Thompson and Company*, 346 U.S. 100 Pages 104 through 111, and the United

States Circuit Court of Appeals has likewise explained this status in *Firemen's Insurance Company of Washington* v. *Washington*, 157 U.S. App. D.C. 320.

Furthermore, the grant of legislative powers to the District of Columbia Council in the Home Rule Act has been made in broad terms. Section 302 of Title 3 recites as follows. Except as provided in Section 601, 602, and 603 the legislative power of the [10] District shall extend to all rightful subjects of legislation within the District, consistent with the Constitution of the United States and the provisions of this Act, subject to all restrictions and limitations imposed upon the state by the tenth section of the first article of the Constitution of the United States.

This is the same type of language which the Congress has conventionally used to establish its own territorial governments.

Furthermore, the breadth of the grant of power made to the District of Columbia Council may further be gauged by reference to the preamble of the Act.

I am reciting provisions of Title 1, Section 102(a).

Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capitol, granted by Article 1, Section 8 of the Constitution, the intent of Congress is to delegate certain legislative powers to the Government of the District of Columbia, authorize the election of certain local officials by registered qualified electors in the District of Columbia, grant to the inhabitants of the District of Columbia powers of local self-government, to modernize, reorganize, and otherwise improve the [11] governmental structure of the District of Columbia, and to the greatest extent possible, consistent with the Constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

In summary on the point, if there were no existing workmen's compensation program Federally authorized to operate

and actually operating in the District of Columbia, in other words, a legislative vacuum in the field, this Court could readily conclude that the Council had the power to fill the vacuum by appropriate legislation. However, such is not the case.

Also, the extent of the Council's powers in these provisions may not be resolved by considering Section 302 and the preamble in isolation. The Home Rule Act does not begin and end with these paragraphs. Instead of a simple and all encompassing grant of power, this legislation is a true complex of powers, reserved and powers extended. And to determine what has been done in the present instance, requires a much broader survey of the legislation.

Now, to continue with the analysis.

Upon any initial reading of the bill, it becomes obvious that the Congress could, when it passed the Home Rule Act, have repealed its own legislation, [12] which now governs the District of Columbia workmen's compensation operation in the private sector, and transferred the function, now performed by the United States Department of Labor, and the United States Circuit and District Courts, to the District government the District of Columbia Court of Appeals and the District of Columbia Superior Court respectively. It is equally obvious that when the Congress passed the Home Rule bill it did not do so.

The true issue, therefore, is whether, in the Home Rule Act, the Congress, not having itself effected such a repeal and transfer, nevertheless, empowered the City Council later to do so.

In order to analyze this interesting question the Court shall follow the principle enunciated by the District of Columbia Court of Appeals in *Georgetown against the Zoning Commission*, 392 A.2d, 1027 at Page 1033. And I quote, "It is a cannon of statutory interpretation that one looks at the particular statutory language within the context of the whole legislative scheme when the legislative intent is to be determined."

The first factor to be noted in this respect is that when the Congress did transfer the active ongoing staffed and funded functions performed by the [13] Secretary of Labor with respect to public employment services for the District of Columbia, it did so specifically and expressedly, carefully providing for the mechanics of transfer. These matters are carefully detailed in Title 2 of the Act at Sections 204(e) and (f). It further scrupulously provided safeguards for the employment rights of the Federal employees then engaged in the function. I refer in this respect to Title 2, Section 204(g).

Now, these provisions that it made for the transfer of these—if the functions of the Secretary of Labor would, at least, in a prima facie fashion, evince a legislative pattern and purpose to transfer to the District of Columbia existing and operating Federal—and operating functions conducted under Federal statutes by Federal officials, only through the means of specific and express statutory provision, taking care to preserve carefully the transfer of records and accounts, and provide for funding and safeguarding rights of persons employed in the Federal office in this capacity.

To suggest that the Congress intended to treat the workmen's compensation program covering the private sector in a different fashion would be atypical and against the grain of the legislative [14] pattern manifest in the Act. These type of factors are known to the law of statutory interpretation under the Latin maxim *inclusio unius exclusio alterius*, or in the present context, suggesting the inference, if the Congress wished to repeal the Act or authorize its municipal corporation, the District of Columbia, to do so, it would have so stated, when it transferred the other functions of the Secretary of Labor.

Now, this is not conclusive on the point, but it leads us to examine with greater care the language of the Congress, when we proceed to review those sections which specifically restrict the—and prohibit the powers to the Congress—to the Council.

In this regard, a number of specific sections have been suggested to the Court. The most important one is as follows.

It is Title 2, Section—wait a minute. It is Title—it is Section 602(a) of Title 6 of the Act. Title 6 itself describes the reservation of Congressional authority.

Section 602(a) starts out as follows. The Council shall have no authority to pass any acts contrary to the provisions of this Act, except as specifically provided in this Act, or two,—and I go to number three, enact any act, or enact any act to amend or repeal any act of Congress which concerns the [15] functions or property of the United States, or which is not restricted in its application exclusively in or to the District.

In that particular sentence, the most important words are, to enact any act or repeal any act of Congress which concerns the functions of the United States.

Now, the Corporation Counsel has made in this regard an able argument, and, indeed, he made an able argument throughout his entire case. He suggests in effect, that there are two hats to be worn by Federal officials, who are operating in and for the District of Columbia, and those who are operating in a national sense.

The dictionary definition of the word functon is to perform, execute, and administer. Black's Law Dictionary arrives at this definition, quoting *McNamera against Powell*, 52 New York Supp. 2d, 515 at Page 551.

In the present instance, it is impossible to conceive this function as anything other than a function of the United States. And is performed by the Secretary of Labor and his employees. Appeals are to the United States Circuit Court of Appeals for the District of Columbia Circuit. Enforcement is by the [16] United States District Judges for the District of Columbia. So the performance, execution, and administration is by the officials of the United States. They are functions of the United States.

I appreciate the distinction suggested to me by the Corporation Counsel. I specifically reject it.

I proceed further to examine the prohibitions and at this time, I go to number eight, which says, that the City Council shall have no authority to pass any act; or, two, enact any act or regulation relating to the United States Court for the District of Columbia or any other Court of the United States in the District other than the District Courts or relation to the duties or powers of the United States Attorney, or the United States Marshal for the District of Columbia.

I have made reference previously to the sections of the Code and to the cases in which the appellate jurisdiction or the jurisdiction of judicial review over this function is performed by the United States Court of Appeals for the Circuit and its enforcement function by the United States District Court.

This provision of the Act, accordingly, is [17] likewise offended by the action of the City Council.

The corollary to that is pointed out, of course, is at the jurisdiction of our own District Courts are expanded to handle the functions which the council has prohibited now to the Federal Courts. This likewise, in the opinion of the Court, comes into the prohibition of 602(a)(4) of the Act.

I likewise note that the further provision is offended. That is 602(b), which recites, that nothing in this Act shall be construed as vesting in the District of Columbia government any greater authority—and then I will pass over some of the other matters recited there—as over any Federal agency than was vested in the commissioner prior to the effective date of Title 4 of this Act.

I cannot see otherwise, and the fact that the District—that the D.C. Council is eliminating a function performed by the Federal agency, the Department of Labor.

Now, accordingly, looking at the whole matter, appreciating the capable arguments that have been made, the Court finds that the D.C. Workmen's Compensation Act of 1979 is null and void and that it specifically violates the provisions of Title 6 of the Home Rule Act reserving grants of—reserving [18] Con-

gressional authority in the instances involved. The declaratory judgment to that effect will issue.

On the question of injunction, the Court does not depart from its finding on ripeness made at the beginning of the action, but in such matters, there are questions—there are questions of ripeness, specifically, which maybe addressed to the injunctive phase. What is to be enjoined? Who do I—what is being threatened specifically at this moment?

The Court believes that the proper action to take in this regard is to deny the application for injunctive relief, without prejudice to renew it later, should the same become necessary.

The Court indulges in the presumption that the District of Columbia government will, as it always has, abide by the law expressed.

Would you prepare me, Mr. Koonz, an order formalizing this matter?

MR. KOONZ: We certainly will, Your Honor.

We have prepared, as part of our pleadings, a proposed order.

THE COURT: How does it—

MR. KOONZ: It reads as follows.

Upon consideration of Plaintiffs' motion for summary judgment and the opposition thereto, it is [19] this 26th day of September, 1980, ordered that Plaintiffs motion for summary judgment be and hereby is granted.

It is further ordered that the summary judgment declaring the Workmen's Compensation Act of 1979 is hereby null and void, and the order is hereby entered.

THE COURT: Have you got it there?

MR. KOONZ: It is part of your—

THE COURT: Let me see it.

MR. KOONZ: It is in your file, Your Honor. It was attached to our original motion.

THE COURT: What is the date?

MR. KOONZ: The 26th of September, Your Honor.

[A pause.]

THE COURT: Gentlemen, I signed it. And I have no doubt but that a question of this great importance will go through the Court of Appeals. It is my opinion that the function of the Trial Court is certainly consistent with appropriate care to decide these matters as rapidly as possible, so it can be addressed effectively to the appellate Court.

MR. KOONZ: Will you allow me a moment?

I have been practicing at the bench for well [20] over twenty years. I would like to thank the Court for its approach, its thoroughness, its obvious dedication to a matter that is of very serious and far-reaching interest to the community.

I am sure counsel would join me in thanking you for staying with this hot issue and spending the time that I know you have, and for giving us the opinion that obviously was—

THE COURT: Thank you.

Mr. Freeman may disagree with you sharply.

MR. FREEMAN: Well, I may disagree, Your Honor, as to the opinion, but certainly not as to the other sentiments.

THE COURT: Thank you all. It is a very interesting argument, capably briefed and capably argued.

MR. KOONZ: Thank you, Your Honor.

MR. FREEMAN: Thank you, Your Honor.

[Thereupon, the case was concluded at approximately 4:42 p.m.]

APPENDIX D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
INTERGOVERNMENTAL RELATIONS

Date: MAR 10, 1980

TO: HONORABLE WILHELMINA ROLARK
Chairperson
Committee on Public Services
and Commission Affairs

FROM: BARBARA C. WASHINGTON
Assistant City Administrator

SUBJECT: Opinion of the Office of the Corporation Council on the Council's authority to repeal sec. 36-501 of D.C. Code, which extends the federal Longshoremen's and Harbor Workers' Compensation Act to the District of Columbia.

Pursuant to your request, please find attached the February 8, 1980 opinion of the Acting Deputy Corporation Counsel concerning whether the Council of the District of Columbia has the legal authority to repeal section 36-501 of the D.C. Code, which extends the federal Longshoreman's and Harbor Workers' Compensation Act to the District of Columbia.

Attachment
ES/dcm

RECEIVED: MAR 11, 1980

Wilhelmina J. Rolark
WILHELMINA J. ROLARK,
Councilmember, Ward 8

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CORPORATION COUNSEL
LEGAL COUNSEL DIVISION
LCD:TKD:gji-VAB95426

Date: February 8, 1980

TO: BARBARA C. WASHINGTON
Assistant City Administrator
for Intergovernmental Relations

FROM: James E. Lemert
Acting Deputy Corporation Counsel
Legal Counsel Division

SUBJECT: Whether the Council has legal authority to repeal D.C. Code §36-501, thereby removing the District from under the jurisdiction of the federal Longshoremen's and Harbor Worker's Compensation Act.

In your memorandum dated January 23, 1980, this Office was asked to determine *whether the Council has authority*, consistent with the Self-Government Act, *to repeal an Act* entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes," 45 Stat. 600 (D.C. Code § 36-501), thereby *removing the District from the jurisdiction of* the *federal Longshoremen's and Harbor Workers' Compensation Act*. 33 U.S. Code §§ 901-950. *Although, I am not prepared to conclude that the legislation pending before the Council as Bill 3-106, the District of Columbia Workers' Compensation Act of 1979 is legally defective, I am concerned that without some federally approved transfer, the legislation, if enacted, could not immediately supplant the existing Longshoremen's and Harbor Workers' Compensation Act.*

The District was originally placed under the jurisdiction of the Longshoremen's Act by the Act of May 17, 1928, 45 Stat. 600, D.C. Code § 36-501, which provides:

> "The provisions of chapter 18 of title 33, U.S. Code [the Longshoremen's Act], including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia * * *."

The Longshoremen's Act, being a federal statute, is administered by the Secretary of the United States Department of Labor. All functions performed under the Act are performed by employees of the United States Government.* See 33 U.S.C. § 939. To the extent that federal employees perform functions for the benefit of the District, it is provided by D.C. Code § 36-504 (Supp. V, 1978), that there shall be appropriated "* * * such funds as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this * * *" program. We are advised that the amount of $779,500 was budgeted in Fiscal Year 1980 for this purpose, and that $841,000 is proposed for Fiscal Year 1981.

At the time the Self-Government Act was being considered in Congress, certain proposals were made to transfer to the District Government itself, some of the functions performed on behalf of the District by the Secretary of Labor. One of these proposals resulted in the enactment of § 204(3) of the Self-Government Act, as follows:

> "All functions of the Secretary [of Labor] under chapter 81 of title 5 of the United States Code, with respect to the *processing of claims* filed by *employees of the government* of the District for compensation for work injuries, are

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* Even though the functions are performed by federal employees, funds paid in accordance with the Act for disbursement to District claimants are earmarked as District funds. According to information supplied to this Office, as of December 31, 1979, these funds totaled $1,289,833.00.

> transferred to and shall be exercised by the Commissioner [Mayor], effective the date after the day on which the District establishes an independent personnel system or systems." [Emphasis supplied.]

87 Stat. 774; D.C. Code § 36-504 (Supp. V, 1978).

At the same time it was recommended that the functions of the Secretary of Labor with respect to the Longshoremen's Act be transferred to the District. In a letter to Hon. Ancher Nelsen, House of Representatives, dated October 24, 1973, then Secretary of Labor Peter J. Brennan wrote:

> "* * * [W]e favor amendment of the bill [which became the Self-Government Act] to transfer administration of the District of Columbia Compensation Act to the D.C. Government. As you know, this law applies to *private employment* in the District." [Emphasis supplied.]

See Home Rule for the District of Columbia, 1973-1974, Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93d Cong. 2d Sess., Vol. IV, p. 3559 (H.R. Comm. Print, 1974). Despite the above quoted recommendation, no such transfer of these latter functions of the Secretary of Labor was made. It seems, therefore, that Congress, at the time of passage of the Self-Government Act, did not intend to transfer the functions of the Secretary of Labor in administering the provisions of the Longshoremen's Act insofar as they pertain to the District of Columbia (D.C. Code § 36-501).

A further consideration arises from the specific limitation in the Self-Government Act respecting the power of the Council of the District of Columbia, i.e., that the *Council* "* * * shall have no authority to * * * enact any act * * * which concerns the functions of the United States * * *." 87 Stat. 813 (D.C. Code § 1-147, Supp. V, 1978). The "functions" of the Secretary of the United States Department of Labor under the Longshoremen's Act would, on their face, seem to constitute "functions of the United States." However, since the Longshoremen's Act constitutes the Workers' Compensation law for the District, and in view of the recognition that workers' compensation is normally a function of the States, rather than the

Federal Government, the administration of the Longshoremen's Act covering private employment in the District of Columbia does not, in my view, necessarily involve a function of the United States. It would seem, however, that some type of agreement with, or authorization from, the Federal Government should be a condition precedent to the effectiveness of local legislation; such could be accomplished clearly by the enactment by Congress of authorizing legislation. Whether the execution of an agreement with the U.S. Department of Labor pursuant to § 731 of the Self-Government Act for a transfer of funds, functions and resources would suffice is less clear and would likely be independent upon legal positions taken by the U.S. Department of Labor, the Federal Office of Management and Budget, and perhaps the Comptroller General.

The file in this matter reflects that the Mayor on April 16, 1979, transmitted to the United States Office of Management and Budget, a proposed bill to transfer the function of administering a workers' compensation program from the Secretary of Labor to the Mayor of the District of Columbia. No action has, to my knowledge, been taken on that legislative proposal.

In view of the foregoing, it is my opinion that, in the absence of a Congressionally or other Federally approved transfer, the Council should not repeal the provisions of D.C. Code § 36-501 et seq., and provide for the subject bill to become law pursuant to § 602 of the Self Government Act. Rather, the effective date of the District's local workers' compensation law should be delayed until appropriate arrangements for an orderly transition of such functions can be implemented. Were the law to become effective within the next several months, the Mayor would be unable to implement its provisions unless either the existing funds and Federal employees are transferred to the District, or until a District fund can be established, and employees can be trained to administer the act. Further, the lack of transitional provisions with respect to suits, actions and administrative proceedings pending at the time of the transfer would likely create a myriad of legal problems.

JEL

APPENDIX E

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
FOR EMPLOYMENT STANDARDS

February 29, 1980

Ms. JUDITH ROGERS
Corporation Counsel
District of Columbia
Room 329
District Building
14th & E Streets, N.W.
Washington, D.C. 20004

Dear Ms. Rogers:

Enclosed per our discussion of this afternoon is the opinion of the Solicitor of Labor concerning District of Columbia workers' compensation.

Should you have any questions regarding this opinion, please feel free to contact Carin Clauss, the Solicitor of Labor.

Sincerely,

/s/ Donald Elisburg
DONALD ELISBURG
Assistant Secretary

Enclosure

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR

800954

FEB 22, 1980

MEMORANDUM FOR: DONALD E. ELISBURG
Assistant Secretary
for Employment Standards

FROM: CARIN ANN CLAUSS
Solicitor of Labor

SUBJECT: District of Columbia Workers' Compensation

This is in response to your request dated February 1, 1980 for our legal opinion as to whether the "Home Rule Act"—the District of Columbia Self-Government and Governmental Reorganization Act of 1973 [1]—gives the District of Columbia government authority to enact its own workers' compensation program without repeal of the District of Columbia Workmen's Compensation Act, D.C. Code 36-501, which is a direct extension of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950.

In our opinion, the short answer to your basic question is no. Although workers' compensation may be a suitable subject for local law, any proposal to enact such legislation for the District of Columbia could not become effective until Congress repeals the present District of Columbia Workmen's Compensation Act which was enacted by Congress in 1928.

Authority to legislate and administer was specifically delegated to the District in certain fields, such as Federal Employees' Compensation (another workers' compensation stat-

[1] Pub.L.No. 93-198, 87 Stat. 7721, Codified at D.C. Code 1978 Supp., §§ 1-121 to 1-171.

ute) and Manpower under § 204. There was, however, no mention of the District of Columbia Workmen's Compensation Act. We therefore believe that the well established statutory construction doctrine of "inclusio unius est exclusio alterius" clearly applies in such a situation. Inclusion of the Federal Employees' Compensation Act and other acts specifically, means that Congress did not intend to include the D.C. Act, which was not mentioned.

The U.S. Court of Appeals for the District of Columbia Circuit recently held, in a case involving the effect of the Home Rule Act on the Attorney general's control over the Lorton Reformatory furlough program, that:

> Congress, in enacting both the Court Reform Act and the Home Rule Act, did not amend any of the provisions under which the Attorney General has regulated the furlough program at the Lorton Reformatory. In light of the long-standing practice in this regard, any assumption that failure to amend was due to inadvertence as distinguished from design would be to ignore the meticulous care Congress exhibited in conforming other statutory provisions to its legislative scheme for the District of Columbia [footnote omitted]. In short, if Congress had intended to alter the nature of the Attorney General's control over the Lorton furlough program, same could have been done by express provision.

Milhouse v. *Levi*, 548 F.2d 357, 363 (D.C. Cir. 1976). The same considerations apply to the D.C. Compensation Act, which has been controlled and administered by the Federal government since 1928. There is even less likelihood that Congress' failure to amend the D.C. Act was due to inadvertence, since the subject of federal employees' compensation was clearly before them and they provided only for transfer of the FCA functions under the Home Rule Act.

APPENDIX F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

April 21, 1980

MEMORANDUM

TO: Hon. Marion S. Barry, Jr.
Mayor

FROM: Judith W. Rogers
Corporation Counsel

RE: Authority of the Council to repeal D.C. Code, § 36-501, which makes the federal Longshoremen's and Harbor Workers' Compensation Act applicable to the District, and to cstablish a new workmen's compensation system for private employees in the District of Columbia.

In a memorandum dated February 8, 1980, the Legal Counsel Division of this Office concluded that, although the Council was not without authority to repeal the Act of May 17, 1928, D.C. Code, § 36-501, certain practical considerations concerning the transfer of funds, resources, and functions and the disposition of pending cases argued against such an enactment without prior agreements with federal authorities or congressional legislation. [1] The memorandum suggested two alternatives: (1) that the District Government execute an agreement with the United States Department of Labor to effect a transfer to the District of funds, personnel, and functions in connection with the administration of the Longshore-men's Act program for the District in accordance with § 731 of the Self-Government Act, D.C. Code, § 1-826 (Supp.

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[1] See also, reasons cited in memorandum from the Acting Director of the D.C. Department of Labor dated April 16, 1979.

V, 1978), or (2) that Congress be requested to enact specific legislation to effect such a transfer.[2]

On February 29, 1980, the Assistant Secretary of Labor for Employment Standards forwarded to me an opinion prepared by the Solicitor of Labor, which concluded that the District was without authority "to enact its own workers' compensation program without repeal of the District of Columbia Workmen's Compensation Act, D.C. Code, § 36-501." The Solicitor reasoned that, since the Self-Government Act transferred to the District authority to administer certain specific functions formerly exercised by the Secretary of Labor, such as those relating to the processing of claims filed by District employees for compensation for work injuries, see *id.* § 204(e), D.C. Code, § 36-504 (Supp. V, 1978), the Act could not be construed as transferring jurisdiction over the local Longshoremen's Act program, which was not mentioned in the Self-Government Act.

This Office was asked to re-examine the question of the authority of the Council to repeal D.C. Code, § 36-501, in light of the opinion of the Solicitor of Labor. Preliminary to addressing this issue, we will trace the history of workmen's compensation legislation in the District in order to put the proposal pending before the Council, Bill 3-106, in perspective.

The first workmen's compensation bill for the District was introduced in the House of Representatives in April, 1921, and after prolonged public hearings, it was reported favorably by the House District Committee in 1922. Similar bills were introduced and reported in 1924 and 1926. However, persistent disagreement over the system of insurance and the plan of administration led to a legislative deadlock. See H.R. Rep. No. 852, 70th Cong., 1st Sess. 1 (1928). Two versions of a work-

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[2] This Office prepared draft congressional legislation to achieve such a purpose, and on April 16, 1979, you transmitted the bill to the federal Office of Management and Budget for clearance.

men's compensation program had been proposed. The first was the so-called Underhill proposal (H.R. 4); the second was the Fitzgerald proposal (H.R. 487). Under the Fitzgerald proposal, the program would have been administered by the United States Employee's Compensation Commission, which at that time was administering workmen's compensation for the half of a million employees of the United States and District Governments. See H.R. Rep. No. 859, 69th Cong., 1st Sess. 2 (1926). Administration of District's workmen's compensation plan under the Underhill proposal was to be by a "single-headed commissionership" (the District of Columbia Insurance Commissioner). *Id.* at 5. In urging the adoption of the Underhill proposal and the rejection of the Fitzgerald proposal, certain members of the House District Committee argued against vesting jurisdiction over the District workmen's compensation program in a federal agency on the ground that this proposal would "violate the principle of home rule" for the District. H.R. Rep. 859, Pt. 2, 69th Cong., 1st Sess. 1 (1926). The members who were in the minority urged that responsibility for administering this program be placed in the District Government. The D.C. Commissioners also favored the Underhill version, stating that "it more nearly meets the needs of the District than any other bill in the House." *Id.* at 9. However, neither the Underhill bill nor the Fitzgerald bill was enacted.

Instead, in 1927 Congress enacted "a modern and reasonable workmen's compensation law for certain maritime workers who are injured while loading or unloading or repairing vessels at the dock—provided that their injury occurs while on board the vessel." H.R. Rep. No. 852, 70th Cong., 1st Sess. 1 (1928). That Act, the Longshoremen's and Harbor Workers' Compensation Act, placed jurisdiction over the administration of the program in the United States Secretary of Labor, See 33 U.S.C. § 939. Then, approximately one year from the enactment of this Act, Congress enacted a local Act for the District of Columbia, the Act of May 17, 1928, D.C. Code, § 36-501. The local Act made the provisions of the federal Act applicable to

the District, with certain amendments to address District of Columbia needs. The Act of May 17, 1928 provided:

> The provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs . . .

Although the Longshoremen's Act is administered by the U.S. Secretary of Labor, see 33 U.S.C. § 939, the cost of the federal government's program in the District of Columbia is paid by District funds. D.C. Code, § 36-503 (Supp. V, 1978), provides that there shall be appropriated ". . . such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this [program]." This Office is advised that $779,500 was budgeted for this program in fiscal year 1980 and $841,000 is proposed for fiscal year 1981. Moreover, funds paid in accordance with the Act for disbursement to District claimants are earmarked as District funds. We are informed that, as of December 31, 1979, these funds totaled $1,289,833.

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774. The Self-Government Act had a dual purpose—to reorganize the government of the District in accordance with the recommendations of the Nelsen Commission and to grant the citizens of the District self-government. The latter provisions, unlike the former, were subject to ratification by the voters of the District. See *id.* 704, D.C. Code, § 1-121 note (Supp. V, 1978). Thus, title II, entitled "Governmental Reorganization," transferred a number of functions performed by federal agencies to the District, including some of those exercised by the Secretary of Labor. *Id.* § 204.

It is true, as the Solicitor of Labor states, that § 204 of the Self-Government Act, which transferred to the District certain functions formerly exercised by the Secretary of Labor, did not transfer the workmen's compensation program. However, the fact that Congress did not take this action itself has no bearing on the question of whether Congress empowered the District Government to establish its own workmen's compensation program under its home rule powers. It is significant that title II of the Act, which took effect six months earlier than the title granting self-government, see *id.* § 771, was intended to take effect "irrespective of whether or not the charter for self-government [was] ratified by the local voters." H.R. Rep. No. 93-482, 93d Cong., 1st Sess. 2 (1973). Naturally, Congress did not feel obligated to transfer all local functions exercised by federal agencies prior to the voters' acceptance of self-government. In any case, the enactment by Congress of local legislation for the District of Columbia, especially that enacted prior to the effective date of local powers of self-government under the Charter, does not in itself preclude subsequent legislation by the Council of the District of Columbia in the same area. While delegating broad powers of self-government of the District of Columbia, Congress expressly retained concurrent authority to legislate for the District on any subject whatsoever. See § 601 of the Self-Government Act, D.C. Code, § 1-126 (Supp. V, 1978).

Accordingly, the crucial question is not whether the Self-Government Act itself transferred the workmen's compensation program to District control, which it plainly did not, or whether the District is without authority "to enact its own worker's compensation program without repeal of [D.C. Code, § 36-501]." Section 44 of Bill 3-106, would, in fact, repeal D.C. Code, § 36-501. The issue is whether the Council is empowered under the Self-Government Act to establish a workmen's compensation act for private employees working in the District which replaces the program administered by the Secretary of Labor.

The stated purpose of the Self-Goverment Act was to "grant to the inhabitants of the District powers of local self-government . . . and to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters." § 102(a), D.C. Code, § 1-121(a)(Supp. V, 1978). Thus, the Act broadly grants the District Government power over "all rightful subjects of legislation." *Id.* § 302(a), D.C. Code, § 1-124(a) (Supp. V, 1978). Any restrictions on this grant of self-government should be narrowly construed in accordance with the statutory purpose. See *McIntosh* v. *Washington*, D.C. App., 395 A.2d 744, 749-751 (1978). In our view it is significant that the Solicitor's opinion failed to address the distinction between the pre- and post-Home Rule legislative authority of the Council. In 1973 no one would have argued that the City Council, established under Reorganization Plan No. 3 of 1967, possessed the authority to pass legislation which would have the effect of repealing a congressional act, even though it was strictly limited in its applicability to the District. The Self-Government Act, however, did give the District Government the power to amend or repeal congressional enactments applicable exclusively to the District. See §§ 302(a), 602(a)(3).

The inquiry thus turns to the express limitations on the Council's legislative authority contained in § 602 of the Self-Government Act. Of these, only § 602(a)(3) would appear to be pertinent. D.C. Code, § 1-147(a)(3) (Supp. V, 1978). That provision states that the Council may not:

> . . . enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.

Whether the functions of the Secretary of Labor in administering the worker's compensation program for the District of Columbia would constitute a "function[] . . . of the United States" within the meaning of § 602(a)(3) is not entirely clear. Although the position of the February 8, 1980 memoran-

dum of the Legal Counsel Division that these functions are essentially local is persuasive, [3] the fact that they are performed by federal officials is of concern. There is virtually no relevant legislative history on the § 602(a)(3) limitation. Accordingly, it is difficult to predict with any assurance whether or not a court might construe the Secretary's administration of the Longshoremen's Act as it applies to employment in the District of Columbia as constituting a "function[] . . . of the United States." On the other hand, the Act of May 17, 1928, D.C. Code, § 36-501, placing such responsibility in the Secretary of Labor, is strictly limited in its application to the District of Columbia, as the program only affects District workers and employees, and is financed with District funds. Moreover, the Self-Government Act itself recognizes that local functions might be performed by federal employees by agreement. See § 731, D.C. Code, § 1-826 (Supp. V, 1978).

Because of such uncertainty, it would be preferable to obtain congressional enabling or authorizing legislation to foreclose future challenges to a Council act. Nevertheless, it is my opinion that the Council is empowered, under the broad grant of legislative authority granted by the Self-Government Act, and reaffirmed in *McIntosh* v. *Washington*, *supra*, to repeal a

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[3] At p. 3 of the February 8, 1980 memorandum, the Deputy Corporation Counsel, Legal Counsel Division, states:

> The "functions" of the Secretary of the United States Department of Labor under the Longshoremen's Act would, on their face, seem to constitute "functions of the United States." However, since the Longshoremen's Act constitutes the Workers' Compensation law for the District, and in view of the recognition that workers' compensation is normally a function of the States, rather than the Federal Government, the administration of the Longshoremen's Act covering private employment in the District of Columbia does not, in my view, necessarily involve a function of the United States.

pre-Home Rule congressional enactment such as D.C. Code, § 36-501, that is limited in its application to the District of Columbia.

JWR

cc: Office of Intergovernmental Relations

APPENDIX G

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I
Section 8.

[Powers of Congress]

[Clause 1] The Congress shall have Power . . .

[Clause 17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. . . .

ARTICLE VI.

[Debts, Supremacy, Oath]

[Clause 2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

DEFAULTED PAYMENTS

33 U.S.C. SEC. 918. (a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. Af-

ter investigation, notice, and hearing, as provided in section 19, a deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

REVIEW OF COMPENSATION ORDER

33 U.S.C. § 921(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

33 U.S.C. § 921(*d*) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of

injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

SELF-GOVERNMENT

Subchapter I. General Provisions.

§ 1-201. Purposes.

(a) Subject to the retention by Congress of the ultimate legislative authority over the nation's capital granted by article I, § 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

§ 1-204. Legislative power.

Except as provided in §§ 1-206, 1-233, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States. (1973 Ed., § 1-124; Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 302.)

ADMINISTRATION

§ 1-233

(2) The term "Mayor" means the Mayor of the District of Columbia established under § 1-241.

(3) The term "Act" means an Act of the Congress.

(4) The term "act" means an act of the Council. (1973 Ed., § 1-146c; Sept. 23, 1975, D.C. Law 1-17, § 4, 22 DCR 1992.)

Legislative history of Law 1-17.—See note to § 1-230.

§ 1-233. Limitations.

(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

(3) Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) Enact any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts);

(8) Enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia; or

* * *

§ 36-322(b)(3) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review, any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 36-320, may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the

Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

Section references.—This section is referred to in §§ 36-315, 36-319 and 36-324.

Legislative history of Law 3-77.—See note to § 36-301.

CHAPTER 5.—WORKMEN'S COMPENSATION

§ 36-501. Longshoremen's And Harbor Workers' Compensation Act Made Applicable To District Of Columbia.

The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.